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(24,135)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 423.

ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

C. L. DE FUENTES, W. L. FOSTER, AND OVERTON CADE, AS COMMISSIONERS AND MEMBERS OF THE RAILROAD COMMISSION OF LOUISIANA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Bill of Complaint.*

Filed February 10th, 1904.

In the Circuit Court of the United States for the Eastern District of Louisiana.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, Commissioners and Members of the Railroad Commission of Louisiana, Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Louisiana:

Your orator, the Illinois Central Railroad Company, a Railroad Corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, and duly qualified as a railroad corporation within and under the laws of the State of Louisiana, brings this, its bill of complaint, against C. L. De Fuentes, W. L. Foster and Overton Cade, as Commissioners and Members of the Railroad Commission of Louisiana, who are residents and citizens of the State of Louisiana, and as such members of the Railroad Commission of Louisiana, have their domicile at Baton Rouge, in the Eastern District of Louisiana.

And thereupon your orator represents and says:

That your orator is a railroad corporation duly created, organized and existing under and by virtue of the laws of the State of Illinois, and having its principal office at Chicago, in said State of Illinois, and is a citizen and resident of the said State of Illinos, that your orator is duly qualified as a railroad corporation to do business in the State of Louisiana; that Oliver M. Dunn is the duly qualified Agent of your orator; upon whom service of citation may be made in the State of Louisiana; that the said C. L. De Fuentes, W. L. Foster and Overton Cade, as Commissioners and Members of the Railroad Commission of Louisiana, and each of them, are citizens and residents of the State of Louisiana, and of the Eastern District thereof.

2 Your orator further represents unto your Honors that it is a common carrier of passengers and freight, and as such owns or controls maintains and operates a line of railroad in the State of Louisiana, said line of railroad in the said State being, to-wit, eighty-seven and seventy-four hundredths miles in length, and passing through the Parishes of Orleans, Jefferson, St. Charles, St. John The Baptist and Tangipahoa; that as such common carrier your orator also operates a line of railroad which begins at Chicago, in the State of Illinois, and traverses the following States, viz: Illinois, Indiana, Wisconsin, Minnesota, Iowa, Nebraska, South

Dakota, Missouri, Kentucky, Tennessee, Mississippi and Louisiana, all of which forms a complete line and system of railroad known and designated as the Illinois Central Railroad.

Your orator further represents that in order to handle and properly care for large quantities of freight brought by it to its terminal, the City of New Orleans, for delivery there and for exportation, it has, after obtaining the consent of the proper governing authorities provided itself, at a cost exceeding one million dollars, in the said City of New Orleans, with the proper and necessary terminal facilities consisting of switch and side tracks, warehouses, sheds, wharves and yards, and that without said terminal facilities your orator cannot conduct its business and discharge its duties to those who ship by its line of railway.

Your orator further represents that by the Constitution of Louisiana, adopted in the year A. D., 1898, the Railroad Commission of Louisiana was created to regulate rates and charges of railroad companies and other companies, and to prevent unjust discrimination, and to have other powers and duties, as will more fully appear by a copy of said Constitution, to which your orator prays leave to refer upon hearing hereof; that the said Constitution contains among others a provision as follows:

"Article 284. The power and authority is hereby vested in the Commission, and it is hereby made its duty, to adopt, change or make reasonable and just rates, charges and regulations, to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates, and telephone and telegraph charges, to correct abuses, and prevent unjust discrimination and extortion in the rates for the same, on the
3 different railroads steamboat and telegraph lines of this State, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property or passengers, or messages, for a shorter than a longer distance over the same line, unless authorized by the Commission to do so in special cases, to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and to require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines with which they connect, and to enforce the same by having the penalties hereby prescribed inflicted through the proper courts having jurisdiction.

The Commission shall have power to adopt and enforce such reasonable rules, regulations, and modes of procedure, as it may deem proper for the discharge of its duties, and to hear and determine complaints that may be made against the classification or rates it may establish, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts, required or authorized by these provisions. They shall have power to summon and compel the attendance of witnesses, to swear witnesses, and to compel the production of books and papers; to

take testimony under commission, and to punish for contempt, as fully as is provided by law for the District Courts."

Said Constitution also contains the following provision:

"Article 286. If any railroad, express, telephone, telegraph, steamboat, or other water craft, or sleeping car company, subject hereto, directly or indirectly, or by any special rate, rebate, or other device, shall intentionally charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered by it, than it charges, demands or receives from any other person, firm or corporation, for doing a like and contemporaneous service, or shall violate any of the rates, charges, orders or decisions of said Commission, such railroad, steamboat or other water craft, express, telegraph, telephone or other company shall forfeit and pay to the State not less than One Hundred Dollars, nor more than Five Thousand Dollars, to be recovered before any Court of competent jurisdiction, at the suit of said Commission, at the domicile of the Commission, or of the Company, or at the place where the complaint arises, at the option of the Commission, provided, that whenever any rate, order, charge, rule or regulation of the Commission is contested in court, as provided for in Article 285 of this Constitution, no fine or penalty for disobedience thereto or disregard thereof shall be incurred until after said contestation shall have been finally decided by the Courts, and then only for acts subsequently committed.

The power of the Commission shall affect only the transportation of passengers, freight, express matter, and telephone and telegraph messages, between points within this State, and the use of such instruments within this State."

Your orator further represents that pursuant to the said provisions of said Constitution, said C. L. De Fuentes, W. L. Foster and R. N. Sims were duly elected Commissioners and members of the Railroad Commission of Louisiana; thereafter, they and each of them qualified and assumed and entered upon the duties as Commissioners and members of the Railroad Commission of Louisiana; that at all times thereafter, prior to the first day of April, 1901, said C. L. De Fuentes, W. L. Foster and R. N. Sims continued in office, and
4 to act as such Commissioners and members of the Railroad Commission of Louisiana; that said R. N. Sims resigned his office as a member of said Railroad Commission of Louisiana, on April 1st, 1901, and Overton Cade was duly appointed as his successor; that at all times subsequent to the first day of April, A. D. 1901, said C. L. De Fuentes, W. L. Foster and Overton Cade have constituted the said Railroad Commission of Louisiana.

Your orator further represents that, to-wit: on the 7th day of August, 1903, said C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and members of the Railroad Commission of Louisiana, adopted Rule or Order No. 295, which rule or order is in the words and figures following, to-wit:

"Railroad Commission of Louisiana.

Order No. 295.

No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are to be loaded with freight to be shipped out of the State, or are loaded with freight shipped into the State.

All tariffs for the "service" of switching cars in the State of Louisiana, shall be filed with the Commission, within thirty days from the date of this order, and all the Commission's rules and orders relative to rates and charges in rates, will also apply to switching charges.

By order of the Commission.

Baton Rouge, La., August 8, 1903.

C. L. DE FUENTES, *Chairman:*
W. L. FOSTER,
OVERTON CADE,
Commissioners.

Attest:
A true copy.
[SEAL.] W. M. BARROW, *Secretary.*"

The above order was duly promulgated in the Official Journal, at Baton Rouge on August 11th, 1903.

On or about August 13th, 1903, your orator, through its proper officer, protested against the adoption of said Order Number 295, by the said Railroad Commission and requested a rehearing thereon, in order that an opportunity might be afforded your orator to argue the matter fully before said rule 295 became effective. The Commission agreed to hear argument on October 2nd, 1903, at New Orleans, and on that day the question was fully argued before it, and taken under advisement. On December 16, 1903 the said Commission refused a rehearing, thus leaving said Order No. 295 in full force and effect, as will more fully appear on and by the records of said Railroad Commission, to which for greater
5 certainty your orator prays leave to refer.

Your orator further represents that if the order of the said Commission, heretofore entered on August 7th, 1903, as aforesaid, is allowed to stand and is enforced, your orator will be deprived of the privilege of entering into just, reasonable and legal contracts relative to its said property, and will be compelled, against its will, and in consideration of a small switching charge, to allow other railroad companies, its competitors in the City of New Orleans, the use and benefit of its yards, switches, and extensive terminal facilities, and to employ its said property to extend the terminals of other railroads in the City of New Orleans to enable them to receive or deliver freight beyond their lines and depots; and it will be forced to carry freight loaded into cars of other companies at points from which it

has provided facilities of its own for carrying such freight at the same rates, and in the same time, and, while deprived of the tariff to be collected for carrying such freight, it will be compelled to allow the cars of said other railroad companies so loaded to occupy its yards and storage tracks, and remain there while being unloaded, the result being that facilities which orator has provided at a very large cost, to handle its own business properly and economically, will be turned over to its competitors, and often to such an extent as to preclude orator from carrying out its obligations to its patrons and from handling its business promptly and economically. That your orator will thus be deprived of its property without due process of law in violation of the fourteenth amendment to the constitution of the United States.

Your orator further represents that if the order of the said Railroad Commission heretofore entered on to-wit August 7, 1903, is allowed to stand and is enforced, your orator will be denied the equal protection of the law guaranteed to it by section 1 of the fourteenth amendment to the constitution of the United States.

Your orator further represents that said order No. 295 is illegal, null and void because beyond the powers conferred upon said Commission by the said constitution of the State of Louisiana which created it and conferred upon it all the powers it possesses; because it is arbitrary and unreasonable, and an unconstitutional exercise of legislative power, and because it is oppressive in its operation upon orator and seeks, without warrant or authority of law, to com-
6 pel orator to devote its yards and terminal facilities to other purposes than the handling of its own business.

Your orator further represents that if the order of the said Railroad Commission heretofore entered on August 7, 1903, is allowed to stand and be enforced it will impair the obligation of the contracts under which you- orator expended large sums of money in providing itself with terminal facilities as aforesaid, contrary to and in violation of Section 10 of Article one of the Constitution of the United States.

Your orator further shows that said Order No. 295 is in violation of the third section of an Act of Congress of the United States, known as "An Act to regulate Commerce", passed February 4th, 1887, and amendments thereto.

Your orator further shows that under section 8 Clause 3 of the Constitution of the United States and the Act to Regulate Commerce, passed February 4, 1887, and amendments thereto, the United States have assumed, and are exercising jurisdiction upon all matters relating to the regulation of interstate commerce; that the cars affected by Order No. 295 are, at the time such order operates upon them, engaged in interstate commerce, that their contents are, at the time such order operates upon them, interstate commerce, and that such order, if carried into effect will be a regulation of interstate commerce and an infringement upon the jurisdiction of the United States, which has the exclusive right to regulate the same, and that for this reason it is in violation of the constitution and laws of the United States.

Your orator further represents that in and by said Constitution of the State of Louisiana it is provided that if any railroad shall violate any of the charges, rates or orders of said Commission, such railroad Company shall forfeit and pay to the State not less than One Hundred Dollars, nor more than Five Thousand Dollars, to be recovered in the manner therein provided; that your orator believes that until an order is entered herein restraining the said C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, from enforcing said order, your orator will be subjected to numerous suits by the said Railroad Commission of Louisiana for the collection and forfeiture of from One Hundred Dollars to Five Thousand Dollars, and your orator will thereby be subjected to a multiplicity of suits.

Your orator further represents that the controversy in this action is between citizens of different states, and that the amount in controversy herein exceeds the sum of Five Thousand Dollars,
7 exclusive of interests and costs.

Your orator further represents that a question is involved herein arising under the Constitution and laws of the United States, as will appear by the allegations in the bill of complaint hereinbefore set forth, and that the said C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, to the great detriment and irreparable injury of the property rights of your orator, are undertaking to arbitrarily compel your orator to adopt and put in force the above order, which will deprive your orator of its property and property rights, without due process of law.

Your orator further represents that unless immediately restrained by the orders of this Honorable Court, the penalties hereinbefore referred to will be undertaken, as your orator believes, to be enforced against your orator, on account of the failure of your orator to put in force the unreasonable and unjust order so promulgated by the said defendants, as hereinbefore set forth.

In consideration whereof, and for as much as your orator is remediless at and by the strict rules of the common law, and relievable only as a court of equity, wherein matters of this kind are properly cognizable, your orator therefore, prays that the said defendants C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, and each of them, be enjoined and restrained from in any manner enforcing, or attempting to enforce the Order No. 295 heretofore entered on the 7th day of August 1903, and that until a hearing herein a temporary injunction and restraining order of like tenor and effect as the injunction above prayed for, be issued against the defendants, said C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, and each of them, and that your orator may have such other and further relief in the premises as the case may require, and to this Court may seem meet.

And now may it please your Honors to grant unto your orator a writ of subpœna of the United States of America, to be issued out of

and under the seal of this Honorable Court, directed to the
8 said C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, and to each of them, defendants herein, therein and thereby commanding them, and each of them, to be and appear at a day certain, and under certain penalty, therein to be expressed, before this Honorable Court, and there to answer, but not under oath (their answer under oath being hereby expressly waived) all and singular the premises, and to stand to and abide by and perform such orders, directions and decrees as may be made against them, or either of them, in the premises as shall seem meet and agreeable to equity and good conscience.

And your orator as in duty bound will ever pray, etc.

(Signed) HUNTER C. LEAKE,
" GUSTAVE LEMLE,
" THOS. J. KERNAN,
Solicitors for Complainant.

(Signed) J. M. DICKINSON,
Of Counsel.

9 UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans:

Hunter C. Leake, being first duly sworn, on oath, deposes and says: that he is one of the Solicitors and Counsel for the Complainant in the above and foregoing bill of complaint, and that he knows the contents thereof; that the allegations thereof are true in substance and effect, except to those matters and things therein stated to be upon information and belief, and as to such matters and things therein stated to be upon information and belief, this affiant believes them to be true.

That the reason this verification is not made by the complainant, the Illinois Central Railroad Company, is that the Complainant is a corporation of the State of Illinois, having its principal office in the City of Chicago in the State of Illinois, and that no officer, or director, other than affiant, competent to make this verification on behalf of said Complainant, is within this jurisdiction.

(Signed) HUNTER C. LEAKE.

Subscribed and sworn to before me this 9th day of January, A. D. 1904.

[SEAL.] (Signed) M. C. SONIAT, *Not. Pub.*

Let the said Defendants show cause before this Court at New Orleans La., on Saturday February 20, 1904 at 11 A. M. why a preliminary injunction should not issue as herein prayed for.

Done and signed at New Orleans, La. on this the 11th day of February 1904.

(Signed) CHARLES PARLANGE,
U. S. Judge.

10 *Answer of Defendants.*

Filed October 6th, 1904.

In the Honorable the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana.

Equity. No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY
versus
C. L. DE FUENTES et als., Commissioners and Members of the Railroad Commission of Louisiana.

Answer of C. L. De Fuentes, W. L. Foster, and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, Defendants.

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, do aver and say:

First. That complainant is a railroad corporation, created, organized and existing under and by virtue of the laws of the State of Illinois, and having its principal office at Chicago, in said State of Illinois, and is a citizen and resident of said State of Illinois, and that it is qualified, as a railroad corporation, to do business in the State of Louisiana; that Oliver M. Dunn is the duly qualified agent of Complainant, upon whom service of citation may be made in the State of Louisiana, and that defendants, as Commissioners and Members of the Railroad Commission of Louisiana, and each of them, are citizens and residents of the State of Louisiana and of the Eastern District thereof.

Second. Defendants admit that complainant is a common carrier of passengers and freight, and, as such, owns or controls, maintains and operates a line of railroad in the State of Louisiana, as to the length of which, however, defendants are not informed, which passes through the Parishes of Tangipahoa, St. John the Bap-

11 tist, St. Charles and Jefferson, into the Parish of Orleans, and terminating in the City of New Orleans; that, as such common carrier, complainant also operates a line of railroad which begins at Chicago, in the State of Illinois, and traverses the States of Illinois, Indiana, Wisconsin, Minnesota, Iowa, Nebraska, South Dakota, Missouri, Kentucky, Tennessee, Mississippi and Louisiana, forming a line and system of railroad known and designated as the Illinois Central Railroad.

Third. Defendants admit the truth of the allegation contained in the bill of complaint that, in order to handle and care for the

freight brought by complainant to its terminal, the City of New Orleans, for delivery there and for exportation, complainant obtained the consent of the proper authorities, authorized to represent the City of New Orleans, to provide itself with proper and necessary terminal facilities, consisting of main and switch and side tracks, warehouses, sheds, wharves and yards, and that it has so provided itself with such facilities; but defendants respectively aver that they do not know and cannot set forth as to their, or either of their belief, or otherwise, whether or not it is true or is a fact, as alleged by complainant, that the terminal facilities aforesaid cost exceeding one million dollars; nor do they know or are they able to set forth whether or not it is true and is a fact, as alleged, that, without such terminal facilities, complainant cannot conduct its business and discharge its duties to those who ship by its line of railway. Defendants aver, however, as a fact, that, in order to obtain from the City of New Orleans and from the proper authorities thereof, authorized to represent it in the matter, the terminal facilities which complainant obtained from and in said City of New Orleans, it was distinctly provided and so understood and agreed to by complainant that, in the laying of its main tracks and its switch and side tracks, in and upon the streets of the said City of New Orleans and in and upon all other public places occupied by its said tracks and under the control of said City and the proper municipal authorities thereof, the privileges and facilities thus obtained by complainant
12 should be and were subordinated to the superior right of said City of New Orleans and the proper governing authorities thereof, as well as of all others authorized and empowered to represent the State of Louisiana in that regard, to control complainant in the operation of its said railroad in the said City of New Orleans, and that all such terminal facilities as complainant may have obtained from said City of New Orleans and the governing authorities thereof, have also been so obtained, under and by virtue of certain ordinances of the City Council of said City, expressly providing that complainant should, for a reasonable compensation switch onto, upon and over its tracks, the cars of all other railroads coming into said City, without discrimination whatever, whenever such service should be required, as will be fully shown by the ordinances of the City Council of said City of New Orleans referred to herein, on the trial hereof.

Fourth. Defendants admit that by the constitution of the State of Louisiana, adopted in the year 1898, the Railroad Commission of Louisiana was created to regulate rates and charges of railroad companies, and of other companies named therein, and to prevent unjust discrimination, and that it was given other powers and duties, as fully set out in said constitution, to which defendants pray leave to refer upon the hearing hereof, and that, among other provisions, said constitution contains Articles 284 and 286, which are referred to in the bill of complaint, and to which defendants also refer; and defendants aver that by said articles of the constitution of Louisiana, the Railroad Commission of said State is also given the power and authority and it is made its duty to adopt, change, or make reason-

able and just regulations to govern and regulate railroad tariffs and service and to correct abuses of any kind, in the operation by said railroad companies of their railroads in this State. Defendants admit further, that, pursuant to the provisions of said constitution, defendants, C. L. De Fuentes and W. L. Foster, with R. N. Sims, were duly elected as Commissioners and Members of the Railroad Commission of Louisiana, and that they and each of them qualified and assumed and entered upon their duties as Commissioners and Members of the Railroad Commission of Louisiana; that, at all times thereafter, prior to the first day of April, 1901, defendants, C. L. De Fuentes and W. L. Foster and said R. N. Sims, continued in office and to act as such Commissioners and Members of the Railroad Commission of Louisiana; that said R. N. Sims resigned his office as said Railroad Commissioner on the first day of April, 1901, and that defendant, Overton Cade, was duly appointed as his successor, and that at all times subsequent to the first day of April, 1901, defendants, C. L. De Fuentes, W. L. Foster and Overton Cade, have constituted the said Railroad Commission of Louisiana.

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Fifth. Defendants admit that, on the 7th day of August, 1903, defendants, as Commissioners and Members of the Railroad Commission of Louisiana, adopted and entered Order No. 295, which is referred to in the bill of complaint, a copy of which is hereto annexed for reference and is marked Exhibit A, and that said order was duly promulgated in the official Journal of said Railroad Commission at Baton Rouge, on the 11th of August, 1903.

Sixth. Defendants admit the truth of the allegation contained in the bill of complaint, that complainant did, on or about the 13th of August, 1903, protest against the adoption of said Order No. 295 and that it did request a rehearing thereon, in order to afford complainant an opportunity to argue the matter fully, before said Order No. 295 became effective; that defendants agreed to hear argument thereon on the 2nd of October, 1903, at the City of New Orleans, and that on that day, the matter was fully argued before them, taken under advisement, and that, on the 16th of December, 1903, after a full investigation and examination of the subject, defendants, as the Railroad Commission of Louisiana, refused a rehearing, thus leaving said Order No. 295 in full force and effect, as will more fully appear by the records and proceedings of the Railroad Commission of Louisiana, to which, for greater certainty, defendants beg leave to refer.

Seventh. Defendants deny the truth of the allegation of the bill of complaint that, if the order of 7th August, 1903, entered as aforesaid, is allowed to stand and is enforced, complainant will be deprived of the privilege of entering into just, reasonable and legal contracts relative to its property. Defendants admit that the enforcement of said order of August 7th, 1903, may result in complainant being compelled to switch, or to permit the switching, onto its tracks, in this State, of the cars, whether loaded or empty, of other railroad companies with which it already connects, and by means of such existing connections between the tracks of complainant and those of other connecting railroad companies,

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operating in this State, for delivery, in this State, of such cars, either to shippers, or consignees, or to or by other connecting railroad companies in this State, but defendants deny that said order can be construed or interpreted to mean, or was intended to mean, that such switching of cars should be done by complainant or by any other railroad company affected by said order, except for reasonable compensation to be paid to the railroad company onto the tracks of which the cars of other railroads may be switched, but that, on the contrary, said order provides that such switching shall be done at rates approved or established by defendants, as the Railroad Commission of Louisiana.

Defendants deny further the truth of the allegation contained in the bill of complaint that the enforcement of said order of 7th August, 1903, will result in complainant being compelled to allow to other railroad companies, in this State, the use and benefit of its yards and terminal facilities, and to employ its property to extend the terminals of other railroads in the City of New Orleans, in order to enable them to receive or deliver freight beyond their lines and depots, except in the limited sense and to the limited extent of being compelled to receive onto its tracks in this State, the empty cars of other railroad companies, as well as such cars of other railroad companies, as may be loaded with freight shipped out of or into the City of New Orleans, by means of the switch connections with other railroad companies which complainant may already have and enjoy.

Defendants deny further the truth of the allegation contained in the bill of complaint, that, if said order of 7th of August, 1903, is enforced, complainant will be compelled to carry freight loaded into the cars of other railroad companies, from points at which it has provided facilities of its own for carrying such freight, at the same rates and at the same time, without being entitled to the tariff to be collected for the carrying of such freight; and further answering, defendants deny that said order No. 295 can be so construed or interpreted as to hold or be held to contemplate or intend that complainant may be compelled to carry freight loaded into the cars of other railroad companies from such points, without receiving for such transportation, the compensation to be collected as in other cases, for carrying such freight.

Defendants deny further the truth of the allegation contained in complainant's bill of complaint that, if said order of the 7th of August, 1903, is carried out and enforced, it will be compelled to allow the loaded cars of other railroad companies to occupy its yards and storage tracks, there to remain while being unloaded, to the extent alleged by complainant, to-wit: That the facilities which complainant has provided to handle its own business properly and economically will be turned over to competing carriers, and in such manner as to often preclude complainant from carrying out its obligations to its patrons, as well as from handling its own business promptly and economically, and thereby depriving complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, as alleged by it.

Eighth. Defendants deny the truth of the allegation of complainant's bill of Complaint that, if the order of 7th August, 1903, heretofore entered, is allowed to stand and is enforced, complainant will be denied the equal protection of the law guaranteed to it by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Ninth. Defendants deny further the truth of the allegations of complainant's bill of complaint that said order of 7th August, 1903, being Order No. 295, is illegal, null and void, because of its being beyond the powers conferred upon the defendants, as the Railroad Commission of Louisiana, by the Constitution of the State of Louisiana creating it, to adopt, but that, on the contrary, the right,
power, and authority is given to defendants, as such Commis-
16 sion, by the Arts. 283 to 289, both inclusive, of the Constitution of the State of Louisiana, adopted by said State on the 12th of May, 1898, and especially by Article 284 of said Constitution, to adopt and enforce the same, and defendants aver further that said order was and is legal and within the power and authority of defendants, as the Railroad Commission of Louisiana, to enter and adopt, under the terms of Art. 271 of the Constitution of said State, which makes it the duty of every railroad company, operating in this State, to receive and transport the passengers, tonnage and cars, loaded or empty, of other railroad companies with which they may connect in this State, without delay or discrimination. That said order is not arbitrary or unreasonable, and the same is not an unconstitutional exercise of legislative power, and the same is not oppressive in its operation upon complainant or any other railroad company in this State.

Defendants deny further the truth of the allegation of complainant's bill of complaint that, by said order, defendants, as the Railroad Commission of Louisiana, seek to compel complainant to devote its yards and terminal facilities, without warrant or authority of law, to other purposes than the handling of its own business, except in the limited sense and to the limited extent of requiring complainant and all other railroad companies in this State, to switch onto its and their tracks, the cars of other railroad companies, in the manner and to the extent provided by said Order No. 295.

Tenth. Defendants deny further the truth of the allegation of complainant's bill of complaint, that, if the said Order No. 295 of August 7th 1903, is allowed to stand and is enforced, the same will impair the obligation of contracts entered into by complainant in providing itself with terminal facilities, contrary to and in violation of Section 10 of Article 1 of the Constitution of the United States.

Eleventh. Defendants deny further the truth of the allegation of the bill of complaint, that said Order No. 295 is in violation of the Third Section of the Act of Congress of the United States, known as "An Act to Regulate Commerce," passed on the 4th of February, 1887, or of any of the amendments thereto; and they deny that said order, in its adoption, operation or effect, can be held to be subject
to, or affected by, the provisions of said Act of Congress, and
17 the amendments thereto, but that, on the contrary, the matters dealt with in and by said Order No. 295, were and are

entirely within and subject to the control of the Railroad Commission of the State of Louisiana, and in no manner subject to the jurisdiction or control of the Interstate Commerce Commission of the United States, or within the reach of any of the Acts of Congress of the United States for the regulation of interstate commerce.

Twelfth. Defendants admit the truth of the allegation contained in complainant's bill of complaint, that under Section 8, Clause 3, of the Constitution of the United States, and the Act of the Congress of the United States to regulate commerce, passed on the 4th of February, 1887, and the amendments thereto, the United States have assumed and are exercising certain jurisdiction in matters relating to the regulation of interstate commerce. Defendants deny, however, the truth of the allegation contained in the bill of complaint, that the cars which may be affected by said Order No. 295 are, at the time said order operates upon them, engaged in interstate commerce; further answering, defendants deny the truth of the allegation of said bill of complaint that the contents of such cars, when loaded, are, at the time such order operates upon them, interstate commerce, or that such order, if carried into effect, will be a regulation of interstate commerce and an infringement upon the jurisdiction of the United States, which defendants admit has the exclusive right to regulate interstate commerce; and that said Order No. 295 is not, for reasons thus assigned by defendants, in violation of the constitution and laws of the United States, but that, on the contrary, the same was and is entirely within the power, authority and control of the Railroad Commission of Louisiana, to adopt and enforce.

Thirteenth. Defendants admit the truth of the allegation of the bill of complaint that it is provided, in and by the constitution of the State of Louisiana, that, if any railroad company shall violate any of the rates, charges, orders or decisions of the Railroad Commission, such railroad company may forfeit and pay to the State of Louisiana not less than one hundred dollars and not more than five thousand dollars, to be recovered before any court of competent jurisdiction, at the domicile of said Commission, or of the
18 company, or at the place where the complaint arises; and while it is true that defendants would have proceeded to enforce said order against complainant, in case of its violation by it, but for the present proceeding, the filing of which operates, under the terms of Articles 285 and 286 of the constitution of the State of Louisiana, to prohibit defendants from entering any forfeiture against complainant, or proceeding to collect the same, nevertheless, defendants deny the truth of the allegation of the bill of complaint, that any such action on its part, as prescribed by the constitution and laws of the State of Louisiana, could or would lead to a multiplicity of suits.

Fourteenth. Defendants admit the truth of the allegation contained in the bill of complaint, that the controversy in this action is between citizens of different States, but defendants deny the truth of the allegation that the amount in controversy herein exceeds the sum of five thousand dollars, exclusive of interest and costs, as alleged by complainant. Further answering, defendants say and aver that the amount involved and the matter in dispute in this con-

troversy do not exceed, exclusive of interest and costs, the sum of two thousand dollars; and therefore, for this reason, this Honorable Court is without jurisdiction to entertain this suit.

Fifteenth. Defendants deny the truth of the allegation in complainant's bill of complaint that any question is involved herein arising under the constitution and laws of the United States; but if any such question is involved herein, nevertheless this Honorable Court is without jurisdiction to hear and determine the same, because the amount involved and the matter in dispute in this controversy do not exceed, exclusive of interest and costs, the sum of two thousand dollars.

Defendants deny further the truth of the allegation contained in the bill of complaint that defendants, as Commissioners and Members of the Railroad Commission of Louisiana, are undertaking arbitrarily, to the great detriment and irreparable injury of the property rights of complainant, to compel complainant, by adopting and putting in force the aforesaid Order No. 295, to deprive complainant of its property and its property rights, without due process of law; and they further deny the truth of the allegation in the bill of complaint that the enforcement of said order will deprive
19 complainant of its property without due process of law.

Sixteenth. Defendants admit that, unless prohibited from so doing by a Court of competent jurisdiction, they would have undertaken to enforce said Order No. 295, but defendants deny that the enforcement of said order could have extended beyond the imposition of such penalties or forfeitures as the Constitution of the State of Louisiana prescribes, subject to the action of defendants in that regard being set aside and annulled in, through and by proper proceedings instituted by complainant against defendants.

Wherefore, these defendants having fully answered, confessed, traversed and avoided or denied all the matters in said bill of complaint, material to be answered, according to their best knowledge and belief, humbly pray this Honorable Court to enter its judgment that these defendants be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained, and for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

(Signed) WALTER GUION,
Attorney General of Louisiana,
Solicitor for Defendants.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

We, C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, defendants in the above cause, having read the foregoing answer, and being duly sworn, do say that the matters and things in said answer contained are true.

(Signed) C. L. DE FUENTES.
" W. L. FOSTER.
" OVERTON CADE.

Sworn to and subscribed before me, this 5th day of October, 1904.

(Signed) CHARLES SCHNEIDAU,
[SEAL.] *Notary Public.*

20 *Agreed Statement of Facts.*

Filed April 18th, 1913.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
C. L. DE FUENTES et al., Commissioners and Members of the Railroad Commission of Louisiana.

It is agreed between the undersigned solicitors for plaintiff and defendants that this matter shall be submitted to the Court for decision upon the Bill and answer and the following agreed statement of facts, viz:

1st. That this Court has jurisdiction.

2nd. That the plaintiff in order to handle and properly care for the freight brought to the City of New Orleans, Louisiana, from other States for delivery here and for exportation to Europe and other foreign countries as well as to care for freight imported from foreign countries, and to be delivered in the states through which its line of railroad passes, as well as the other states of the United States and Canada, has, after obtaining the consent of the proper governing body, at a cost exceeding several hundred thousand dollars, provided itself, in the said City of New Orleans, with the proper and necessary facilities, consisting of switch and side tracks, warehouses and yards, and without said terminal facilities plaintiff cannot conduct its business as above stated. The annexed ordinances, numbered 1 to —, *is* the consent of the governing board, referred to.

3rd. That the other railroad companies entering New Orleans have competitive lines to plaintiff's line of railroad from many points in various states to New Orleans, charging the same rates and making the same time.

4th. That the manner in which freight, both intrastate and interstate, brought in New Orleans by plaintiff is handled is to place the loaded cars on the various switch tracks of plaintiff to be unloaded by consignees.

21 5th. That if said Order No. 295 is allowed to stand, plaintiff's switch tracks will be subjected to use by the several railroad companies entering New Orleans, causing more cars to pass over the same and interfering with plaintiff carrying out its obligations to its patrons.

6th. That when the cars loaded with interstate and intrastate freight arrive at New Orleans, the consignee is first notified that the freight is ready for delivery at depot or warehouse of the company; that after consignee calls and pays the freight bill he gives a switching order to the agent of the railroad company transporting the shipment to New Orleans to have the car switched and placed on

the terminal tracks, or on some of the industrial tracks connected with the terminal tracks, in the City of New Orleans, for delivery; that this order is then submitted through proper agency to the employees of the Illinois Central Railroad Company, and the Illinois Central Railroad Company executes the switching order.

7th. That the Illinios Central Railroad Company, in connection with the various railroads entering the City of New Orleans, has issued, published and now has in effect various terminal tariffs covering terminal switching in the City of New Orleans, which tariffs do not include any rates for transporting the freight to or from the City of New Orleans but simply cover the charges made for switching cars from the depot or yard of one railroad company to points on its terminals. Copies of all such tariffs are on file and approved by the Interstate Commerce Commission, and with the Railroad Commission of Louisiana.

It is understood that said tariffs can be referred to by either party at any time during the progress of this case on presenting any view in connection therewith.

8th. That there are switch movements between points within the City of New Orleans, as set forth in Admission No. Sixth hereof, one or both of which may be located upon the terminals of the Illinois Central Railroad Company, upon which there is a switching
22 charge varying according to distance, and in addition to which switching charge there is a charge of $3.00 per car for car rental; that these switch movements are entirely within the switching limits of the City of New Orleans and are made on the orders of the consignees under the circumstances stated in No. Sixth hereof; that said charges are shown on tariffs filed with and approved by the Interstate Commerce Commission, and with the Railroad Commission of Louisiana.

9th. That Order No. 295 was adopted by the Railroad Commission of Louisiana, after a full hearing and investigation, and that the said Railroad Commission was legally organized, and its Commissioners legally elected members thereof at the time said Order was adopted.

(Signed) GUSTAVE LEMLE,
Solicitor for Complainant.
" WYLIE M. BARROW,
Solicitor for Defendant.

23 *Opinion of Court.*

Filed January 15th, 1914.

United States District Court, Eastern District of Louisiana, Baton Rouge Division.

No. 49. C. C.

ILLINOIS CENTRAL RAILROAD CO.
vs.
C. L. DE FUENTES et als.

This case has remained on the docket long enough for the Supreme Court to indirectly decide it. See Grand Trunk Railway Company et al. vs. Michigan Railroad Commission, decided December 8, 1913. The restraining order heretofore issued will be recalled and set aside and the bill dismissed without prejudice.

24 *Final Decree.*

Filed January 19th, 1914.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Equity. No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana.

Final Decree.

This cause came on to be heard at this term, and was argued by counsel, and taken under advisement; whereupon, upon consideration thereof, it is now

Ordered, adjudged and decreed that the restraining order heretofore issued be and it is hereby recalled and set aside, and that the bill be and the same is hereby dismissed, without prejudice, at complainant's costs.

(Signed) RUFUS E. FOSTER, *Judge.*

New Orleans, Louisiana, January 19, 1914.

25 *Petition for Appeal and Order Granting Same and Appeal Bond.*

Filed March 4th, 1914.

U. S. District Court, Eastern District of La., New Orleans Division.

No. 49. In Equity.

ILLINOIS CENTRAL RAILROAD COMPANY
versus
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana.

The above named plaintiff conceiving itself aggrieved by the final decree made and entered on the 19th day of January, 1914, in the above entitled cause, does hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) R. V. FLETCHER,
" HUNTER C. LEAKE,
" GUSTAVE LEMLE,
Attorneys for Plaintiff.

It is ordered that the foregoing appeal be allowed as prayed for upon plaintiff, the Illinois Central Railroad Company, giving bond in the sum of Five hundred Dollars, conditioned as the law directs, which shall operate as a supersedeas.

New Orleans, La., March 4, 1914.

(Signed) RUFUS E. FOSTER,
Judge of the United States District Court.

26 U. S. District Court, Eastern District of La., New Orleans Division.

No. 49. In Equity.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana.

Know all men by these presents, that we, the Illinois Central Railroad Company as principal and Gustave Lemle, as surety, are held and firmly bound unto C. L. De Fuentes, W. L. Foster and Overton Cade as Commissioners and Members of the Railroad Com-

mission of Louisiana in the full sum of Five Hundred Dollars, to be paid to the said C. L. De Fuentes, W. L. Foster and Overton Cade as Commissioners and Members of the Railroad Commission of Louisiana; their certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Dated this 4 day of March, 1914, and

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana in a suit depending in said Court, between the Illinois Central Railroad Company and C. L. De Fuentes, W. L. Foster and Overton Cade as Commissioners and Members of the Railroad Commission of Louisiana, No. 49 of the docket of said Court, in Equity, a final decree was rendered against the said Illinois Central Railroad Company, and the said Illinois Central Railroad Company having obtained an appeal and filed a copy thereof in the Clerk's office of said Court to reverse the final decree in the aforesaid suit, and citations directed to the said C. L. De Fuentes, W. L. Foster and Over-
27 ton Cade as Commissioners and Members of the Railroad Commission of Louisiana, citing and admonishing them to be and appear before the Supreme Court of the United States to be holden at Washington, D. C., within thirty days from date hereof.

Now, the condition of the above obligation is such, that if the said Illinois Central Railroad Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

Sealed and delivered in the presence of

(Signed) ILLINOIS CENTRAL RAILROAD CO.,
By GUSTAVE LEMLE, *Attorney.*
" GUSTAVE LEMLE.

Approved by:
(Signed) RUFUS E. FOSTER, *Judge.*

UNITED STATES OF AMERICA,
Eastern District of La.:

Personally came and appeared Gustave Lemle, who, being duly sworn, deposes and says that he is surety on the within bond; that he resides in New Orleans, La., and is worth the full sum of Five Hundred Dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) GUSTAVE LEMLE.

Sworn to and subscribed before me, this 4 day of March, 1914.
[SEAL.] (Signed) W. B. DONOVAN.
Deputy Clerk U. S. District Court, E. D. of La.

Before me the undersigned authority, personally came and appeared Gustave Lemle, who, being duly sworn by me, deposes and

says that he is of counsel for the plaintiff in the above styled and numbered matter, and that the President, Vice-President and general officers are absent from the jurisdiction of this Court.

(Signed) GUSTAVE LEMLE.

Sworn to and subscribed before me, this 4 day of March, 1914.

[SEAL.] (Signed) W. B. DONOVAN,
Deputy Clerk U. S. District Court, E. D. of La.

28 *Assignment of Error on Appeal.*

Filed March 4th, 1914.

The District Court of the United States.

In Equity. No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana.

Assignment of Error on Appeal.

And on the 4th day of March 1914, comes the said plaintiff by Hunter C. Leake and Gustave Lemle, its solicitors and says that the decree in said cause is erroneous and against the just rights of said plaintiff for the following reasons:

First. Because the evidence showed that Order 295 of the Railroad Commission of Louisiana, the enforcement of which was enjoined and the nullity thereof sought in the present action, makes it obligatory upon plaintiff to switch cars for any other railroad with which it connects at rates approved or established by the Railroad Commission of the State of Louisiana "whether such cars are to be loaded with freight to be shipped out of the state or loaded with freight shipped into the State of Louisiana." The said order is therefore clearly an interference with and regulation of inter-state commerce, contrary to Section 8 of the Constitution of the United States.

Second. Because the evidence showed that under the said order 295 of the Railroad Commission of Louisiana, every railroad company entering New Orleans by making a physical connection with the tracks of the Illinois Central Railroad Company, can get the use of that Company's costly terminals in New Orleans and
29 make it do the switching necessary to that end, upon simply paying for the service of carriage at rates approved or established by the Railroad Commission of Louisiana. To require such action on the part of the Illinois Central Railroad Company is to take its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

Third. Because the evidence showed that under the said order 295 of the Railroad Commission of Louisiana every competitive railroad from points without the state of Louisiana such as Chicago, St. Louis, Louisville, Memphis and points within the State, such as Baton Rouge, etc., could for the purpose of reaching and using plaintiff's terminal station and its costly terminals, in the city of New Orleans, by making an arbitrary connection with the railroad of plaintiff in New Orleans, or at a point near thereto, make plaintiff do the switching necessary to that end, upon simply paying for the service of carriage at rates approved or established by the Railroad Commission of Louisiana. This would deprive plaintiff of the privilege of entering into just, reasonable and legal contracts relative to its property; force plaintiff to carry freight loaded into other railroad companies' cars at points it has provided facilities of its own for carrying such freight at the same rates and in the same time established by its competitors, and thus deprive plaintiff of all tariff for carrying the freight for the benefit of its competitors and compel it for a mere nominal switching charge to be established by the Railroad Commission of Louisiana to allow the cars of other companies so loaded to be on its yards and storage tracks and to remain there while being unloaded. The result will be that the terminals and terminal station which plaintiff has provided at a very heavy cost to handle its own business properly and economically will be turned over to its competitors. To require such a service of plaintiff is to take its property without due process of law and to deprive it of the equal protection of the law, contrary to the Fourteenth Amendment of the Constitution of the United States.

Fourth. Because it appears by the evidence and from the form of the order of the Louisiana Railroad Commission, that if this order becomes operative, its inevitable effect will be to require the plaintiff to participate in the transportation of freight from competitive points and elsewhere in and out of the State of Louisiana to New Orleans without permitting the plaintiff to include in the route of such freight substantially all the length of its line. Plaintiff shows that its right to employ the longest possible mileage of its own is a property right and if plaintiff is deprived thereof, it is denied the equal protection of the law and its property is taken without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

Fifth. Because the evidence showed that order 295 of the Railroad Commission of Louisiana is in violation of an Act of Congress known as an act to regulate commerce passed February 4th, 1887, and amendments thereto, and is, therefore null and void.

Sixth. Because the evidence showed that order 295 of the Railroad Commission of Louisiana deprives plaintiff of its property and property rights without due process of law and also deprives plaintiff of the equal protection of the law, contrary to the Fourteenth Amendment of the Constitution of the United States.

Seventh. Because the evidence showed that plaintiff's terminals

at New Orleans have been created at an expense of several hundred thousand dollars, and under the local conditions at New Orleans they could not be duplicated; that they are necessary to the operation of plaintiff's business, as it could not discharge its duties
31 as a common carrier without them, and that to compel the opening of them to other railroads would be virtually a taking of the property of plaintiff. This situation has been recognized by the Congress of the United States, since the third section of the Interstate Commerce Act, while requiring the railroads subject to the act to freely interchange traffic, has added these words: "But this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

Eighth. Because Congress by Act of June 20, 1906, or Hepburn Act, and amendments thereto, has taken over the whole subject of terminals, team tracks, switching tracks, sidings, etc., therefore, the Railroad Commission for the State of Louisiana has no right or authority to require plaintiff, an interstate carrier of freight and passengers, to switch cars tendered to it on its terminals, in the City of New Orleans, at rates to be fixed and established by the said Railroad Commission.

Ninth. Because the Interstate Commerce Commission in the matter styled Waverly Oil Company vs. Pennsylvania Railroad Company, submitted to the Commission on May 9th, 1910, and decided December 3rd, 1913, held that the requirements upon a carrier for the use of its terminals must be reasonable and the compensation must be fixed not on the basis of mere cost of service, but in view of the fact that the terminals are of special value to a railroad as part of its system; and that the public may require railroad companies to handle cars upon its terminals tracks, but that requirement should be made and the compensation should be determined in view of the entire situation, and that the Interstate Commerce Commission has the power to fix the same. It follows, therefore, that the order 295 of the Railroad Commission of Louisiana, requiring plaintiff to switch cars for any other railroad at rates to be approved or established by it, whether such cars are to be loaded with freight to be shipped out of the state or loaded with freight
32 shipped into the state of Louisiana, is null and void, as the same power cannot be lodged in the Interstate Commerce Commission and the State Railroad Commission at the same time.

Tenth. Because the evidence showed that order 295 of the Railroad Commission of Louisiana provides that all tariffs for the service of switching cars in the state of Louisiana, whether loaded with interstate *of* intrastate freight, shall be filed with the Commission, and all the Commission's rules and orders relative to rates and changes in rates shall also apply to switching charges; that under Act 171 of 1908, suits to set aside orders of the Railroad Commission must be brought within three months and all rights are prescribed after that time, and that under Article 286 of the Constitution of the State of Louisiana, plaintiff is subject to a fine of not less than

$100.00, nor more than $5,000.00 for each violation of the rates, charges, orders or decision of said Commission. Provided that whenever any rate, order, charge, rule or regulation of the Commission is contested in court, no fine or penalty for disobedience there*to*, or disregard thereof, shall be incurred until after said contestation shall have been finally decided by the Courts, and then only for acts subsequently committed. If the judgment rendered herein stands as the final judgment, plaintiff's right to attack the said order as null and void would be prescribed by Act 171 of 1908, and in the event it is not, it will either be compelled to obey it in each instance or subject itself to the payment of the penalties hereinabove referred to, unless it daily resorts to the court in each instance a car is tendered to it to be switched to test the correctness and application of said order, and as this will be many times each day, it necessarily means a multiplicity of suits.

Eleventh. Because the evidence shows that order 295 of the Railroad Commission of Louisiana read in connection with Article 286 of the Constitution of Louisiana is null and void upon its
33 face, because the severity of the penalties makes an appeal to the court against its provisions at such risks and costs that plaintiff should not be compelled to incur.

Twelfth. Because the Interstate Commerce Commission in said matter 4851, Waverly Oil Works Company vs. Pennsylvania Railroad Company et al., submitted to it May 9th, 1913, and decided December 3rd, 1913, held that before one railroad company can require another to transport over its terminals cars loaded with freight that a joint rate should be established by agreement between the said railroad companies, and in the event of their failure to agree by the Interstate Railroad Commission. In the said decision, the Interstate Commerce Commission clearly recognized that, for making deliveries or for terminal service, the carrier performing such service is entitled to substantially greater compensation than would represent a proper switching charge. The order, therefore, of the Railroad Commission of Louisiana, requiring plaintiff to switch for all other railroad companies at rates to be fixed by the Railroad Commission of Louisiana cars to be loaded with freight to be carried out of the State and cars loaded with freight brought into the state, is null and void.

Thirteenth. Because as held by the Interstate Commerce Commission in the suit of Waverly Oil Works Company vs. Pennsylvania Railroad Company, and by the Supreme Court of the United States in Grand Trunk Railroad Company vs. Michigan Railroad Company, that while the public have the right to require the railroad Companies to transport cars over their terminal lines, it has no right to require one railroad company to switch the cars tendered to it by another railroad company. In the case of transporting, the public must pay the rate, while in the case of switching, the railroad company tendering the freight may absorb the switching charge.

Wherefore, the plaintiff prays that the decree of the said Court

may be reversed, and that there be judgment in favor of plaintiff as prayed for.

(Signed) R. V. FLETCHER,
" HUNTER C. LEAKE,
" GUSTAVE LEMLE,
Att'ys for Plaintiff.

34 *Præcipe for Transcript.*

Filed March 4th, 1914.

On Letterhead of Gustave Lemle.

March 4, 1914.

Clerk of the United States District Court, Eastern District of Louisiana, New Orleans, La.

DEAR SIR: Referring to the appeal taken by plaintiff to the United States Supreme Court in the matter styled Illinois Central Railroad Company vs. C. L. De Fuentes, W. L. Foster and Overton Cade as Commissioners and Members of the Railroad Commission of Louisiana, you will please incorporate into the transcript the following parts of the record, viz:

First. The bill.

Second. The answer.

Third. The stipulation relative to the submission of the matter, and the exhibits referred to in said stipulation as being made a part.

Fourth. The opinion and decree of the Court.

Fifth. Petition for appeal and order granting it.

Sixth. Bond for appeal.

Seventh. Assignment of Errors.

I hereby certify that I did on the 24th and 25th days of February, 1914, address and mail the letters of which the annexed Exhibits "A" and "B" are copies to the Honorable W. M. Barrow, Assistant Attorney General of the State of Louisiana and a solicitor for the defendant in the above mentioned and described suit.

Yours truly,

(Sig.) GUSTAVE LEMLE,
Local Attorney.

35 Feb. 24, 1914.

W. M. Barrow, Esq., Assistant Attorney General, Baton Rouge, La.

DEAR SIR: I shall on Wednesday ask the Court for appeal from the final decree rendered in the case of Illinois Central Railroad Company vs. C. L. De Fuentes, W. L. Foster, and Overton Cade as Commissioner- and Members of the Railroad Commission of Louisiana, No. 49, in Equity, United States District Court, Eastern District of Louisiana. Number 2 of the agreed statement of facts reads:

"That the plaintiff in order to handle and properly care for the

freight brought to the City of New Orleans, Louisiana, from other States for delivery here and for exportation to Europe and other foreign countries, and to be delivered in the states through which its line of railroad passes, as well as the other states of the United States and Canada, has, after obtaining the consent of the proper governing body, at a cost exceeding several hundred thousand dollars, etc. * * * The annexed ordinances, numbered 1 to —, *is* the consent of the governing board, referred to."

No ordinance that I am aware of was filed in the United States District Court. You will recall you were to furnish a copy of the ordinances to be annexed to the admission. Please send me to be filed in the District Court such ordinances as you desire to be incorporated into the record on appeal. Rule 75 of the New Federal Equity Rules requires of appellant or his solicitor to file with the clerk of the court from which the appeal is prosecuted, together with proof or acknowledgment of service of a copy on the appellee or his solicitor, a præcipe which shall indicate the portions of the record to be incorporated into the transcript on such appeal. Should the appellee or his solicitor desire additional portions of the record incorporated into the transcript, he shall file with the clerk of the court his præcipe also within ten days thereafter, unless the time shall be enlarged by the court or a Judge thereof, indicating such additional portions of the record desired by him. Please,
36 therefore, take notice that I shall instruct the Clerk that the following parts of the record be incorporated into the transcript on appeal, viz:

First. The bill.

Second. The answer.

Third. The stipulation relative to the submission of the matter, and the exhibits referred to in said stipulation as being made a part.

Fourth. The opinion and decree of the Court.

Yours truly,

——— ———.

37 Feb. 25th, 1914.

W. M. Barrow, Esq., Assistant Attorney General, Baton Rouge, La.

DEAR SIR: Referring to my letter informing you as to what I had instructed the Clerk to incorporate in the transcript of appeal in the matter of Illinois Central Railroad Company vs. C. L. De Fuentes, W. L. Foster and Overton Cade, I have added thereto the following:

Fifth. Petition for appeal and order granting it.

Sixth. Bond for appeal.

Seventh. Assignment of Errors.

Yours truly,

———— ————,
Local Attorney.

38 Feb. 27, 1914.

W. M. Barrow, Esq., Assistant Attorney General, Baton Rouge, La.

DEAR SIR: I have yours of the 26th, with enclosure as stated. I note that you have written to Mr. Leake asking that he furnish

me with copies of the other ordinances under which the Illinois Central Railroad Company operates in the City of New Orleans, in order that they may become part of the transcript on appeal. I shall send you copy of the assignment of errors as soon as they are completed, which will be in the next two or three days.

I note that you say it will be your purpose as soon as the appeal is filed in the Supreme Court of the United States, to move for the advancement of the case, and that if I will join you in the matter, you will be glad to have me do so. I shall refer your letter to Mr. Hunter C. Leake, and as soon as I receive his reply I shall communicate further with you on the subject.

Yours truly,

——— ———.

39 March 4, 1914.

W. M. Barrow, Esq., Assistant Attorney General, Baton Rouge, La.

Illinois Central Railroad Company vs. Railroad Commission.

DEAR SIR: Referring to your letter of February 26th, enclosed please find letter from Mr. Hunter C. Leake, of date February 28th, 1914. You will note Mr. Leake says that you are in error in stating that Mr. Ferry and he agreed to furnish you with copies of all ordinances printed in pamphlet form; that the only ordinance bearing on this matter which he has in pamphlet form is Ordinance 15,080, and that as to the other ordinances you should specify just exactly what ordinances you want to use and he will get printed copies of the same from the City Hall, which would answer every purpose. I shall, therefore, hand to the Clerk to be filed and incorporated into the record Ordinance 15080. If you desire any other ordinances incorporated into the record, please let me hear from you at an early date, and I shall request Mr. Leake to obtain them and file them with the Clerk, to be incorporated into the record.

I enclose you copy of assignment of errors, which I will thank you to acknowledge receipt.

Yours truly,

——— ———,

Local Attorney.

40 EXHIBIT.

Filed March 4th, 1914.

MAYORALTY OF NEW ORLEANS,
CITY HALL, March 1, 1899.

Calendar No. 1855.

No. 15,080, Council Series.

An Ordinance.

SECTION 1. Be it ordained by the Council of the City of New Orleans, that Water Street, between the upper line of Patterson street and the lower line of Penniston street and the lower width of 110 feet by the addition thereto of a strip of private property 60 feet wide, to be purchased or expropriated for the purpose as hereinafter provided, along and abutting upon the river line of said Water street, according to a plan to be prepared by the City Engineer, and to be annexed hereto as part hereof.

SECTION 2. Be it further ordained, That Water street (widened as proposed by this ordinance, be connected with Front street at or about Upperline street, across Bordeaux, Lyons and Water streets and through private property to be purchased or expropriated for the purpose as hereinafter provided; said connection between Water and Front streets to be 110 feet in width between parallel lines, the line nearest the lake to begin at the present lower lake corner of Bordeaux and Water streets, and to end at or about the present lower lake corner of Upperline and Front streets, according to a plan to be prepared by the City Engineer, and to be annexed to this ordinance as part hereof.

SECTION 3. Be it further ordained, etc., That Front street, from the present upper line of Upperline street, to the lower line of Valmont street, be widened from its present width of 50 feet, to a width of 110 feet, by the addition thereto of a strip of private property 60 feet in width to be purchased or expropriated for the purpose as hereinafter provided, along and abutting upon the river line of said Front street; according to a plan to be prepared by the City Engineer and to be annexed hereto as part hereof.

41 SECTION 4. Be it further ordained, etc., That Front street, between the upper line of Valmont street and the lower line of Joseph street be widened from its present width of 50 feet to a width of 110 feet by the addition thereto of a strip of private property 60 feet in width, to be purchased or expropriated as hereinafter provided, along and abutting upon the lake line of said Front street, according to a plan to be prepared by the City Engineer and annexed hereto as part hereof.

SECTION 5. Be it further ordained, etc., That the Board of Commissioners of the Orleans Levee District be requested to remove the

present levee commencing at a point at or about Joseph street, and ending at or about the upper line of Audubon Park, and to construct a new levee as near the river as in the judgment of the Board of Commissioners of the Orleans Levee District, approved by the Board of Engineers of the State of Louisiana, may be safe and proper. Said new levee to connect, at its lower end, with the present levee at or about Joseph street, and at its upper end, with the present levee at or about the upper line of Audubon Park; the proposed new levee to be constructed by the Board of Commissioners of the Orleans Levee District with funds to be furnished to said Board as hereinafter provided, it being however, understood that no claims shall be made against the City of New Orleans for any property taken for the purpose of constructing said levee.

SECTION 6. Be it further ordained, etc., That a new street 110 feet in width, to begin at the lower corner of Front street (widened as proposed by this ordinance) and Joseph street, and to extend to the upper line of Audubon Park, be opened across intervening streets and through private property to be purchased or expropriated for the purpose as hereinafter provided, along the river, on a line as nearly parallel as practicable to the new levee, between Joseph street and the upper line of Audubon Park, petitioned and provided for in this ordinance, the river line of said new street, however, to be not less than 60 feet from the inner toe of said proposed new levee, the said new street to connect with an extension thereof as hereinafter provided according to a plan to be prepared by the City En-
42 gineer and to be annexed hereto as part hereof.

SECTION 7. Be it further ordained, etc., That an extension of the new street provided for in this ordinance, said extension to begin at a point at or about the upper line of Audubon Park, where it shall connect with said new street and extend to the upper line of Hillary street and to be 110 feet in width, be opened across intervening streets and through private property to be purchased or expropriated for the purpose as hereinafter provided; along the river on a line as nearly parallel as practicable to the present levee, the river line of said extension, however to be never less than 60 feet from the inner toe of the present levee, according to a plan to be prepared by the City Engineer and to be annexed hereto as part hereof.

SECTION 8. Be it further ordained, etc., That a further extension of the new street, provided for in this ordinance, said further extension to begin at the upper line of Hillary street, where it shall connect with the extension of said proposed new street provided for in this ordinance to extend to the upper line of the Parish of Orleans and to be 110 feet in width, be opened across intervening streets and through private property to be purchased or expropriated for the purpose, as hereinafter provided for, along lines as nearly identical as practicable with those of the extension of said new street provided for in the preceding section of this ordinance, and on lines as nearly straight as practicable the river line of said further extension to be never less than sixty feet from the inner toe of the levee, according to a plan to be prepared by the City Engineer and to be annexed hereto as part hereof.

SECTION 9. Be it further ordained, etc., That upon the terms and conditions hereinafter set forth and provided in this ordinance, the Chicago, St. Louis and New Orleans Railroad Company, its lessees, successors and assigns, be and it is hereby authorized and empowered to locate, construct, maintain freely use and operate, as part of its railroad and railroad system, two main railroad tracks from the lower line of Penniston street along Water street to the lower line
43 of Bordeaux street, along the connection of Water street with Front street, between Bordeaux and Upperline streets, provided for by this ordinance, into Front street, along Front street to the lower side of Joseph street, along the new street provided for by this ordinance, from the lower line of Joseph street to the upper line of Audubon Park, along the extensions of said new street, provided for by this ordinance, from the upper line of Audubon Park to the upper line of the Parish of Orleans and over and across all intervening streets, alleys and public places; and also such connecting tracks, cross-overs, spurs and switches as may from time to time be necessary to connect each of said main railroad tracks with the other, and with the Stuyvesant Docks on the Mississippi River in the City of New Orleans or any private property which said railroad, its lessees, successors or assigns may hereafter acquire between Penniston street and Napoleon avenue, the said two main railroad tracks to be located on the inner or lake side of the two public railroad tracks provided for by this ordinance, and on the inner or lake side of the neutral ground provided for by this ordinance, and shall be located according to lines and grades to be established by the City Engineer and according to a plan to be prepared by the City Engineer and to be annexed hereto as part hereof.

SECTION 10. Be it further ordained, etc., That the Chicago, St. Louis & New Orleans Railroad Company, its lessees, successors and assigns, shall be and it is hereby authorized and empowered to locate, construct, maintain, freely use and operate the two main railroad tracks provided for by this ordinance, which are, for convey-ance, designated by this ordinance as tracks Nos. 1 and 2, upon and only upon the following terms and conditions: First—The City of New Orleans shall acquire by purchase or expropriation according to law, all private property needed for the widening or opening of any street to be widened or opened as provided for by this ordinance, and said private property, when so acquired, shall be and remain perpetually dedicated to public use for street uses and purposes as provided for by this ordinance. All of said property shall be acquired b-
44 the City of New Orleans, by expropriation according to law, except such as may be acquired by purchase by the City of New Orleans, with the consent and approval of said railroad company, or by said railroad company, to be dedicated in all cases as herein provided for, and the cost of all private property purchased or expropriated by the city shall be paid by the said railroad company to the owners thereof at the dates when the city acquires title for the public to the same.

Second. That the funds required for the removal of the levee from its present line, to a line nearer the river as provided for by

this ordinance, shall be paid over by said railroad company to the Board of Commissioners of the Orleans Levee District at such times and in such amounts as the Board may require.

Third. That said railroad shall locate and construct from the upper line of Audubon Park to the upper line of the Parish of Orleans, along the extension of the new street provided for by this ordinance, and on the outer or river side of the two tracks provided for by this ordinance, for the Chicago, St. Louis and New Orleans Railroad Company, its lessees, successors and assigns, two railroad tracks similar in all respects, and constructed in the same manner as the tracks provided for by this ordinance for said Chicago, St. Louis and New Orleans Railroad Company, with such connecting tracks, cross-overs, spurs and switches to connect each of said tracks with the other, as may be designated by the City Engineer at the time of the construction of said two tracks, and the said railroad company shall dedicate said two railroad tracks, connecting tracks, spurs and switches, in full ownership and complete title to the City of New Orleans for perpetual public use, said tracks being for convenience, designated by this ordinance as tracks Nos. 3 and 4, and shall be constructed according to lines and grades to be established by the City Engineer. The center line of track No. 3 shall be 13 feet from the center line of track No. 2 and the center line of track No. 4 shall be 26 feet from the center line of track No. 2 according to a plan to be prepared by the City Engineer and to be annexed hereto as part hereof.

SECTION 11. Be it further ordained, etc., That the payment by the said railroad company of the purchase price or cost of expropriation of all private property acquired by the City of New Orleans for the purpose of widening, connecting or opening streets, to the owners thereof, at the dates when the city shall acquire title to the same, the dedication as herein provided for by said railroad company of property acquired by it for street purposes as provided for by this ordinance, the payment by said railroad company to the Board of Commissioners of the Orleans Levee District in such sums and at such times as said board may require of all funds needed for the removal of the present levee, and for the construction of the proposed new levee and its connections with the present levee, as provided for by this ordinance, and the location and construction by said railroad company of the two railroad tracks, connecting tracks, cross-overs, spurs and switches to be dedicated to the city for perpetual public use, as provided for by this ordinance, shall be and they are hereby declared to be, by the Council of the City of New Orleans, and shall be acknowledged and accepted by said railroad company as conditions precedent to be fully and completely complied with and performed by said railroad company before the grant to said railroad company to locate, construct, maintain, freely use and operate the main railroad tracks connecting tracks, cross-overs, spurs and switches provided for by this ordinance for said railroad company shall have legal force and effect. That whenever the Chicago, St. Louis and New Orleans Railroad Company, its lessees, successors or assigns, shall have fully and completely complied with and performed the conditions specified in this section

they shall be entitled to receive from the Mayor of the City of New Orleans, over his official signature and Seal, a certificate to that effect, and such certificate, when approved by the Council, shall be full proof of the fact that said Chicago, St. Louis and New Orleans Railroad Company, its lessees, successors or assigns, have fully and completely complied with and performed all of said conditions.

46 SECTION 12. Be it further ordained, etc., That all of the railroad tracks, connecting tracks, cross-overs, spurs and switches to be laid in streets and public places as provided by this ordinance, shall be constructed on lines and grades to be established by the City Engineer. There shall be established in the 110 foot street provided for by this ordinance, a neutral ground 50 feet in width, according to a plan to be prepared by the City Engineer, which said neutral ground shall be occupied by the railroad tracks provided for by this ordinance, and which said neutral ground shall be curbed and grade- by said railroad company, the grades to be established by the City Engineer. Said railroad company shall maintain, so as not to obstruct drainage, and keep in good order, between Penniston street and the upper line of Audubon Park, the entire neutral ground provided for by this ordinance provided that said railroad company shall only maintain that portion of said neutral ground between said limits, which is not occupied by the railroad tracks provided for said railroad by this ordinance, and designated as tracks Nos. 1 and 2 only as long as said portion of said neutral ground is unoccupied by railroad tracks of other railroads or public railroad tracks, and thereafter shall be bound to maintain only that half of said neutral ground upon which the tracks provided for said railroad company by this ordinance are laid, said railroad company shall maintain so as not to obstruct drainage, and keep in good order between the upper line of Audubon Park and the upper line of the Parish of Orleans the entire width of the neutral ground provided for by this ordinance, provided that said railroad company shall be bound to maintain that portion of the neutral ground which is occupied by the public tracks provided for by this ordinance, only as long as said public tracks are not used by other railroad companies or by the public and thereafter shall be obliged to maintain only that half of said neutral ground upon which the tracks provided by this ordinance for said railroad company, are laid. All intersections of streets shall be planked or at the discretion of said railroad company paved with material equally good, or better, in the opinion of the City Engineer, between
47 the tracks, between the rails and a sufficient distance on each side of the tracks to provide a safe and easy approach to and a crossing over said tracks, said planking or other pavement to be on lines and levels to be established by the City Engineer, and all construction work of every character to be done subject to the approval of the City Engineer. That all construction work shall be commenced within six months from the date of the acceptance of this ordinance, as hereinafter provided, by the Chicago, St. Louis & New Orleans Railroad Company, its lessees, successors and assigns, and shall be completed within eighteen months after said date, and that

until said tracks and other construction work is finally completed the grant of track privilege made by this ordinance to said Chicago, St. Louis & New Orleans Railroad Company, its lessees, successors and assigns shall have no legal force or effect, any delay resulting from legal proceedings to be deducted from the time fixed by this ordinance for the beginning and completing of construction work.

SECTION 13. Be it further ordained, etc., That the said railroad company, its lessees, successors and assigns shall not discriminate at any time, illegally or unjustly against the City of New Orleans.

SECTION 14. Be it further ordained, etc., That said railroad company, its lessees, successors and assigns shall be bound to switch or belt without unreasonable delay over said tracks Nos. 1 and 2 and over all other tracks laid in the public streets or public places, along the river front now operated or which may be hereafter operated, owned, controlled or leased by said railroad company, its lessees, successors and assigns except into the private property or terminals of said railroad company, its lessees, successors and assigns, for a reasonable compensation not to exceed a maximum charge of $1.50 per car, their own cars, and the cars of any other railroad company now operating or which may hereafter operate a line of railroad within the City of New Orleans, also cars belonging to individuals; when such service shall be requested, and no unjust discrimination shall be made between different companies or individuals entitled to and requesting such service; provided, that said railroad
48 company, its lessees, successors and assigns shall not be obliged to switch cars or other railroad companies for a less sum than other railroad companies charge for a similar service, until such time as other railroad companies operating in the City of New Orleans agree with the City of New Orleans upon a fixed switching or belting charge.

SECTION 15. Be it further ordained, etc., That the main railroad tracks of said companies, provided for by this ordinance, may be used for freight and passenger cars and trains drawn by steam engines or other motive power at the discretion of the said railroad company, its lessees, successors and assigns.

SECTION 16. Be it further ordained, etc., That the use in this ordinance, of the words "Expropriation or purchase" shall not be interpreted or construed so as to prevent the acquisition by the City of New Orleans or the Chicago, St. Louis and New Orleans Railroad Company, its lessees, successors or assigns, of property for levee or street purposes by modes other than expropriation or purchase.

SECTION 17. Be it further ordained, etc., That all ordinances or parts of ordinances in conflict with the provisions of this ordinance be, and the same are hereby repealed.

SECTION 18. Be it further ordained, etc., That this ordinance shall take effect only after it has been, in its entirety, accepted by the Chicago, St. Louis & New Orleans Railroad Company, its lessees, successors and assigns, by notarial act before the City Notary, and that if said acceptance by said railroad company of this ordinance is not made within 60 days from the promulgation of this ordinance — shall become, in all its parts, null, void and of no effect.

Adopted by the Council of the City of New Orleans, February 28, 1899.

W. R. BRASHEAR,
Clerk of Council.

Approved March 1st, 1899.

W. C. FLOWER, *Mayor.*

A True copy:

R. L. TULLIS,
Secretary to the Mayor.

49 Clerk's Office, City Council, New Orleans.

CITY HALL, November 27th, 1912.

I hereby certify that the above is a true and correct copy of Ordinance No. 15,080 Council Series, as officially promulgated, and on file in ordinance book in my office.

(Signed) GEORGE FERIER, JR.,
Clerk of Council.

50 *Waiver of Citation of Appeal.*

Filed March 10th, 1914.

United States District Court, Eastern District of Louisiana, Baton Rouge Division.

In Equity. No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana.

Waiver of Citation of Appeal.

An appeal having been taken by the appellants to the Supreme Court of the United States in the above numbered and entitled cause, service of citation of appeal and citation of appeal are hereby waived.

(Signed) WYLIE M. BARROW,
Assistant Attorney General, Attorney and Solicitor for C. L. De Fuentes, W. L. Foster, and Overton Cade, as Commissioners and Members of the Railroad Commission of Louisiana, Defendants in Error.

51 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

Clerk's Office.

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify, that the foregoing 50 pages contain and form a full, complete, true and perfect transcript of the Record, Assignment of Error- on Appeal, and Proceedings in the case of the Illinois Central Railroad Company versus C. L. De Fuentes, W. L. Foster, and Overton Cade, Commissioners and members of the Railroad Commission of Louisiana, No. 49 of the Docket of the Baton Rouge Division of the late United States Circuit Court, Eastern District of Louisiana, (made in accordance with the Præcipe for Transcript, copied therein).

Witness, my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 16th day of March, A. D. 1914.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER, *Clerk.*

Endorsed on cover: File No. 24,135. E. Louisiana D. C. U. S. Term No. 423. Illinois Central Railroad Company, appellant, vs. C. L. De Fuentes, W. L. Foster, and Overton Cade, as Commissioners and Members of the Railroad Commission of Louisiana. Filed March 30th, 1914. File No. 24,135.

Supreme Court of the United States, October Term, 1914.

No. 423.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,

vs.

C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana, Appellees.

It is hereby stipulated and agreed by and between the undersigned counsel for the Appellant and Appellees, respectively, that:

Since the printed transcript of the record in this case does not contain the order granting an interlocutory injunction signed by United States Circuit Judge Charles Parlange, the 25th day of February, A. D. 1904, at New Orleans, Louisiana, and the certified copy of Order No. 295 of the Railroad Commission of Louisiana, attached to the original answer of the defendants as a part thereof and marked "Exhibit A," therefore, copies of these documents are supplied herewith and may be used by either plaintiffs or defendants in their briefs and arguments before the court and considered by the court.

GUSTAVE LEMLE,
Attorney for Appellant.
WYLIE M. BARROW,
Assistant Attorney General,
Attorney for Appellees.

Decree Granting Injunction Pendente Lite.

Entered and Filed February 25th, 1904.

United States Circuit Court, Eastern District of Louisiana.

No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY

vs.

C. L. DE FUENTES, W. L. FOSTER, and OVERTON CADE, Commissioners and Members of the Railroad Commission of Louisiana.

In the Matter of the Rule Taken by Complainant on Defendants for an Injunction Pendente Lite.

This cause came on to be heard on the Twentieth day of February, 1904.

Present: Gustave Lemle, Esq., Counsel for Complainant, and Hon. Walter Guion, Attorney General of the State of Louisiana, Counsel for Defendants.

And the Court after hearing Counsel for both Complainant and Defendants, and after considering the sworn allegations of the Bill of Complaint, and being of the opinion that Complainant is entitled to an injunction pendente lite as prayed for:

It is ordered, adjudged and decreed that a writ of injunction be issued out of and under the seal of this Court, addressed to C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, and each of them, restraining them, and each of them, from in any manner enforcing or attempting to enforce the Rule No. 295 of said Railroad Commission of Louisiana heretofore entered on the 7th day of August, 1903, against Complainant; this injunction to continue in force during the pendency of this suit, or until the further orders of this Court.

Dated at New Orleans, in the Eastern District of Louisiana, this 25th day of February, A. D. 1904.

(Signed) CHARLES PARLANGE,
U. S. Judge.

(Copy.)

Order No. 295 of the Railroad Commission of Louisiana, Marked Exhibit "A," Made Part of Defendants' Answer, and Referred to Therein.

Filed October 8th, 1904.

Railroad Commission of Louisiana, Baton Rouge.

Order No. 295.

At a general session of the Railroad Commission of Louisiana, held at its office in Baton Rouge, Friday, August 7th, 1903, the following general rule was adopted:

Application of Car Service Rules.

No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are loaded or empty, or whether such cars are to be loaded with freight to be shipped out of the State, or are loaded with freight shipped into the State.

All tariffs for the "service" of switching cars in the State of Louisiana shall be filed with the Commission within thirty days from the date of this order, and all the Commission's rules and orders relative to rates, and changes in rates, will also apply to switching charges.

Baton Rouge, Louisiana, August 8, 1903.

By order of the Commission.

C. L. DE FUENTES, *Chairman.*
W. L. FOSTER,
OVERTON CADE,
Commissioners.

Attest:
A true copy:
[SEAL.] (Sig.) W. M. BARROW, *Secretary.*

(Copy.)

UNITED STATES OF AMERICA:

United States District Court, Eastern District of Louisiana.

Clerk's Office.

I, Henry J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify the foregoing to be a true copy of the decree granting injunction pendente lite, Entered and filed February 25th, 1904, and of the order of the Railroad Commission of Louisiana, No. 295, Marked Exhibit "A," made part of Defendants' Answer and referred to therein, filed October 8th, 1904, in the case of the Illinois Central Railroad Company vs. C. L. De Fuentes, W. L. Foster, and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, No. 49 of the Docket of the late United States Circuit Court, Baton Rouge Division.

Witness, my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 21st day of December, A. D. 1914.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER, *Clerk.*

[Endorsed:] 423/24135. No. 49. (Late Circuit Court.) U. S. District Court. Eastern District of Louisiana, Baton Rouge Division. Illinois Central Railroad Company vs. C. L. De Fuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana. Copy of decree granting injunction pendente lite, and of order No. 295, of the Railroad Commission of Louisiana.

[Endorsed:] File No. 24,135. Supreme Court U. S. October term, 1914. Term No. 423. Illinois Central Railroad Co., Appellant, vs. C. L. De Fuentes et al., etc. Stipulation as to use of papers omitted from transcript of record. Filed December 26, 1914.

Supreme Court of the United States

OCTOBER TERM, 1914

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

VS.

C. L. DE FUENTES, W. L. FOSTER, AND OVERTON CADE, AS COMMISSIONERS AND MEMBERS OF THE RAILROAD COMMISSION OF LOUISIANA.

NO. 423

MOTION TO ADVANCE

And now come C. L. De Fuentes, W. L. Foster and Overton Cade, through their successors, Shelby Taylor, B. A. Bridges, and John T. Michel, as commissioners and members of the Railroad Commission of Lousiiana, respondents in the above named and numbered cause, by Wylie M. Barrow, their solicitor, and move to advance for argument, on the docket

of the court, the appeal taken herein by the Illinois Central Railroad, appellant, upon the following grounds:

I.

That this is a case involving the right of the Railroad Commission of Louisiana to fix reasonable rules and regulations governing the switching of cars by the Illinois Central Railroad, appellant, in the City of New Orleans, Louisiana, which has been decided in favor of appellees in the United States District Court for the Eastern District of Louisiana.

II.

That there is pending against the Railroad Commission of Louisiana and its members, respondents herein, an injunction preventing them from exercising any jurisdiction or control over the switching charges of the Illinois Central Railroad in the City of New Orleans, Louisiana.

III.

That the issues involved are of great public importance to shippers in the City of New Orleans, and generally in the State of Louisiana.

Wylie McBurney

Assistant Attorney General, Solicitor for Railroad Commission of Louisiana, et al, Appellees.

Office Supreme Court, U. S.
FILED
DEC 15 1914
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1914.

No. 423

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

vs.

C. I. DEFUENTES, W. L. FOSTER AND OVERTON CADE, AS COMMISSIONERS AND MEMBERS OF THE RAILROAD COMMISSION OF LOUISIANA,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLANT.

ROBERT V. FLETCHER,
BLEWETT LEE,
Attorneys for Appellant.

HUNTER C. LEAKE,
GUSTAVE LEMLE,
Of Counsel.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1914.

No. 423

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

vs.

C. I. DEFUENTES, W. L. FOSTER AND OVERTON CADE, AS COMMISSIONERS AND MEMBERS OF THE RAILROAD COMMISSION OF LOUISIANA,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLANT.

STATEMENT OF FACTS.

On August 7, 1903, the Railroad Commission of Louisiana adopted a rule or order, No. 295, which reads as follows:

> "No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are to be loaded with freight to be shipped out of the state, or are loaded with freight shipped into the state. All tariffs for the 'service' of switching cars in the State

> of Louisiana, shall be filed with the Commission, within thirty days from the date of this order, and all the Commission's rules and orders relative to rates and changes in rates, will also apply to switching charges."

This order was duly promulgated in the official journal of the Commission on August 11, 1903. At the request of the appellant a rehearing was granted, but the Commission declined to disturb the order, thereby leaving the same in effect. Thereupon, the appellant filed a bill in equity in the Circuit Court of the United States for the Eastern District of Louisiana, making the members of the Railroad Commission of Louisiana parties defendant and praying for an injunction to restrain the members from enforcing this order and for general relief. In this bill it was averred that the appellant was a common carrier of interstate freight, operating a railroad through quite a number of states, and that this order of the Commission was invalid for the following reasons:

1. Because it violates the due process clause of the Fourteenth Amendment in that its effect was to compel appellant to allow other railroads, its competitors, to use the terminal facilities of appellant located in the City of New Orleans, and because, if enforced, it would deprive appellant of the opportunity to transport freight and collect therefor, and would prevent appellant from handling its own business for its own patrons promptly and economically.

2. Because the order violates the equal protection clause of the Fourteenth Amendment.

3. Because, in enacting the order, the Railroad Commission of Louisiana exceeded the powers conferred upon it by the Constitution of the State of Louisiana.

4. Because, in enacting the order complained of, the Commission acted arbitrarily and unreasonably.

5. Because the enactment of the order was an unconstitutional exercise of legislative power.

6. Because this order violates the contract clause of the Constitution of the United States.

7. Because the order violates the Act to Regulate Commerce, enacted February 4, 1887, and amendments thereto.

8. Because the order as passed violates the commerce clause of the Constitution of the United States.

It was further charged that, under the Constitution of Louisiana, from which the Louisiana Railroad Commission derives its powers, a penalty of not less than one hundred dollars nor more than five thousand dollars would be incurred for every violation of the Commission's order and that, unless the members of the Commission were restrained from enforcing the order, the appellant would be subjected to numerous suits for penalties and the jurisdiction of a court of equity was invoked in order to prevent a multiplicity of suits.

The Railroad Commissioners of Louisiana filed their answer, traversing most of the material averments of the bill of complaint, but admitting that the order had been entered; that the appellant was engaged in interstate commerce; that it owned certain terminal facilities at New Orleans, and that penalties would accrue if the order were disobeyed. This answer was filed on October 6, 1904. On April 18, 1913, there was filed in this case an agreed statement of facts, wherein it is stipulated:

1st. That the court has jurisdiction.

2nd. That the appellant has provided for itself at New Orleans certain switch and side tracks, warehouses and yards at a cost exceeding several hundred thousand dollars, without which the appellant could not carry on its railroad business.

3rd. That other railroad companies, competitive with appellant, serve New Orleans.

4th. That freight, both intrastate and interstate, brought to New Orleans by the appellant, is placed in loaded cars on numerous switch tracks of appellant, there to be unloaded by the consignees.

5th. That if order No. 295 shall stand, these switch tracks of appellant's will be used by other railroad companies, thereby causing more cars to pass over these switch tracks and thereby interfering with appellant's obligation to its own patrons.

6th. That when cars loaded with interstate and intrastate freight arrive at New Orleans, the consignee is notified that the freight is ready for delivery and thereupon the consignee usually calls, pays the freight bill of appellant and gives a switching order to the agent of the railroad company, by virtue of which the car is switched and placed on an industrial track or some terminal track for delivery.

7th. That the Illinois Central Railroad Company has filed with the Interstate Commerce Commission and the State Railroad Commission of Louisiana various terminal tariffs covering switching in the City of New Orleans, these tariffs not covering the charges for line-haul transportation but only the charge for executing the switching movement.

8th. That there are certain switch movements executed by appellant for which a switching charge is made, the movement being entirely within the limits of the City of New Orleans, the charges for which are shown in schedules filed both with the Interstate Commerce Commission and the Louisiana Railroad Commission.

9th. That the order, No. 295, was regularly adopted after full hearing and investigation and that no point is

made as to the regularity of the organization of the Commission.

Upon the bill and answer and the agreed statement of facts, the District Court of the United States, successor to the Circuit Court of the United States for the Eastern District of Louisiana, entered a final decree, dismissing the bill, stating in a brief opinion that this action was taken upon the authority of *Grand Trunk Ry. Co. et al. v. Michigan Railroad Commission,* 231 U. S., 457. From this decree, this appeal is prosecuted directly to the Supreme Court of the United States, upon the ground that the litigation involves questions arising under the Constitution of the United States.

The authority of the Louisiana Railroad Commission is derived from the following provisions found in the Constitution of the State of Louisiana:

> "Article 284. The power and authority is hereby vested in the Commission, and it is hereby made its duty, to adopt, change or make reasonable and just rates, charges and regulations, to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates, and telephone and telegraph charges, to correct abuses, and prevent unjust discrimination and extortion in the rates for the same, on the different railroads steamboat and telegraph lines of this state, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property or passengers, or messages, for a shorter than a longer distance over the same line, unless authorized by the Commission to do so in special cases, to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and to require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines with which they connect, and to enforce the same by

having the penalties hereby prescribed inflicted through the proper courts having jurisdiction.

The Commission shall have power to adopt and enforce such reasonable rules, regulations, and mode of procedure, as it may deem proper for the discharge of its duties, and to hear and determine complaints that may be made against the classification or rates it may establish, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts, required or authorized by these provisions. They shall have power to summon and compel the attendance of witnesses, to swear witnesses, and to compel the production of books and papers; to take testimony under commission, and to punish for contempt, as fully as is provided by law for the District Courts.

Article 286. If any railroad, express, telephone, telegraph, steamboat, or other water craft, or sleeping car company, subject hereto, directly or indirectly, or by any special rate, rebate or other device, shall intentionally charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered by it, than it charges, demands or receives from any other person, firm or corporation, for doing a like and contemporaneous service, or shall violate any of the rates, charges, orders or decisions of said Commission, such railroad, steamboat, or other water craft, express, telegraph, telephone or other company shall forfeit and pay to the state not less than one hundred dollars, nor more than five thousand dollars, to be recovered before any court of competent jurisdiction, at the suit of said Commission, at the domicile of the Commission, or of the company, or at the place where the complaint arises, at the option of the Commission, provided, that whenever any rate, order, charge, rule or regulation of the Commission is contested in court, as provided for in Article 285 of this Constitution, no fine or penalty for disobedience thereto or disregard thereof shall be incurred until after said contestation shall have been finally decided by the courts, and then only for acts subsequently committed.

The power of the Commission shall affect only the transportation of passengers, freight, express matter, and telephone and telegraph messages, between points within this state, and the use of such instruments within this state."

ERRORS RELIED UPON (20).

The District Court of the United States for the Eastern District of Louisiana erred in failing to find that the said order is null and void, for each and all of the following reasons:

1st. Order 295 as entered by the Railroad Commission of Louisiana constitutes an interference with and a regulation of interstate commerce contrary to Section 8 of the Constitution of the United States.

2nd. Because the said order, No. 295, of the Louisiana Railroad Commission violates that certain act of Congress, known as the Act to Regulate Commerce enacted February 4th, 1887, and amendments thereto.

3rd. Because Congress, by an act of June 20th, 1906, commonly known as the Hepburn Act and amendments thereto, has taken over the whole subject of terminals, team tracks, switch tracks, sidings, etc., wherefore, the Railroad Commission of Louisiana has no authority to require appellant, an interstate carrier of freight and passengers, to switch cars tendered to it on its terminals in the City of New Orleans at rates to be fixed and established by the Louisiana Railroad Commission.

4th. The said order violates particularly that part of the Interstate Commerce Act commonly known as the Hepburn Law, providing, "But this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to any carrier engaged in like business."

5th. Because the effect of the decision of the District Court is to disregard the fact that the Interstate Commerce Commission, by its numerous decisions and administrative orders, has taken over the whole subject of the use of terminals and the making of deliveries at terminals by interstate carriers in the receipt and delivery of freight moving in interstate commerce.

6th. Because the effect of the order is to require the appellant in effect to establish through routes for the handling of freight from competitive points, thereby compelling appellant to embrace in such through route substantially less than the entire length of its railroad, contrary to the provisions of the Act to Regulate Commerce enacted February 4th, 1887, and amendments thereto.

7th. Because the effect of the order in this case is to turn over to appellant's competitors the use of appellant's extensive and valuable terminals at New Orleans, thereby depriving appellant of the use of its property and of the property itself without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

BRIEF AND ARGUMENT.

I.

THE DISTRICT COURT OF THE UNITED STATES HAD JURISDICTION.

While some effort is made in the answer filed in this cause to challenge the jurisdiction of the District Court, yet there can be no question as to the jurisdiction, and for the following reasons:

(1) The jurisdiction is admitted in the agreed statement of facts.

(2) The District Court necessarily took jurisdiction in deciding the case upon the merits.

(3) Even if the jurisdiction had not been recognized in the way indicated, there can be no doubt, under the authorities, that the District Court of the United States had full jurisdiction to hear and determine the issues presented by the bill, answer and agreed statement of facts. This will readily appear from a brief review of some of the leading authorities. In

Reagan v. *Farmers' Loan & Trust Co.*, 154 U. S., 362,

there was presented to the court a case where a trustee in a trust deed executed by the railroad company, the trustee being a citizen of New York, filed a bill against the members of the Texas Railroad Commission, citizens and residents of the State of Texas, seeking to enjoin the Commission from administering and applying the statutes of the State of Texas creating the Railroad Commission and giving it certain authority. There was a specific attack in that case upon certain rates, rules and regulations prescribed by the Texas Commission. It was con-

tended that the suit could not be maintained in the Circuit Court of the United States for the reason that that court was without jurisdiction. After considering and disposing of the contention that this was a suit against the state and holding that it could not be so considered, the court uses this language:

> "Nor can it be said in such a case that relief is obtainable only in the courts of the state. For it may be laid down as a general proposition that whenever a citizen of a state can go into the courts of a state to defend his property against the illegal acts of its officers, a citizen of another state may invoke the jurisdiction of the Federal courts to maintain a like defense. A state cannot tie up a citizen of another state, having property rights within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts. Given a case where a suit can be maintained in the courts of the state to protect property rights, a citizen of another state may invoke the jurisdiction of the federal courts (citing authorities). We need not, however, rest on the general powers of the federal court in this respect, for in the act before us, express authority is given for a suit against the Commission to accomplish that which was the specific object of the present suit.
>
> Section 6 provides that any dissatisfied 'railroad company or other party at interest may file a petition' 'in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant.' The language of this provision is significant. It does not name the court in which the suit may be brought. It is not a court of Travis County, but in Travis County. The language differing from that which ordinarily could be used to describe a court of the state, was selected apparently in order to avoid the objection of an attempt to prevent the jurisdiction of the federal courts. The Circuit Court for the Western District of Texas is 'a court of competent jurisdiction in Travis County.'"

Further along in the opinion, it is held that the Circuit Court of the United States could maintain its juris-

diction because there was a valid claim that the orders of the Texas Commission violated a contract between the railroad company and the state, and therefore presented a question arising under the Constitution and Laws of the United States. We mention this decision particularly, since it is shown here in the bill and admitted in the answer that the appellant is a citizen of the State of Illinois and the appellees are citizens of the State of Louisiana, thereby creating that diversity of citizenship which gives to the federal court jurisdiction.

In view of the discussion in the opinion just quoted as to the federal court being a court held in Travis County, Texas, it is worth while to call attention to the fact that Section 285 of the Louisiana constitution, dealing with the powers and authority of the Railroad Commission, thus provides:

> "If any railroad, express, telephone, telegraph, steamboat and other water craft, or sleeping car company, or other party in interest, be dissatisfied with the decision or fixing of any rate, classification, rules, charge, order, act or regulation, adopted by the Commission, such party may file a petition setting forth the cause or causes of objection to such decision, act, rule, rate, charge, classification or order, or to either or to all of them, in a court of competent jurisdiction, at the domicile of the Commission, against said Commission as defendant, and either party to said action may appeal the case to the Supreme Court of the state, without regard to the amount involved, and all such cases, both in the trial and Appellate Courts, shall be tried summarily, and by preference over all other cases. Such cases may be tried in the court of the first instance either in chambers, or at term time; provided, all such appeals shall be returned to the Supreme Court within ten days after the decision of the lower court; and where the Commission appeals, no bond shall be required. No bond shall be required of said Commission in any case, nor shall advance costs, or security for costs be required of the Commission."

It will thus be seen that the Constitution of Louisiana provides for a court review and while there is some language in the provision, indicating that the reference is to the state courts, yet, upon familiar principles, and particularly upon the authority of the cases which will be cited later, it is evident that this section alone is sufficient to give jurisdiction to the federal courts. For, if there is a provision for a court review in any court of competent jurisdiction, the federal court, having jurisdiction by reason of diverse citizenship, will thereby be granted authority.

Again, the federal court's jurisdiction would be undoubted upon the authority of the Reagan case, just quoted, on the ground that there are bona fide and serious questions arising under the Constitution and Laws of the United States. These questions relate to the due process clause of the Constitution, the equality of treatment clause, the contract clause and the commerce clause, all of which will be fully considered a little later in this brief.

In the great leading case of

Smyth v. *Ames*, 169 U. S., 466,

the jurisdiction of the federal court, to set aside an order of the Nebraska Railroad Commission, was seriously challenged. The plaintiffs in that case were stockholders of the Union Pacific Railway Company and citizens of the State of Massachusetts; defendants were certain railroad corporations of Nebraska and certain officers of the state, charged with the duty of administering the laws of that state. The suit was to set aside certain provisions of the Nebraska statute, fixing rates. It was contended that the federal court could have no jurisdiction because there was a provision in the Nebraska statute, whereby questions of this character could be determined in the state

courts. Responding to the argument that there was a lack of jurisdiction, this court uses this language:

"We cannot accept this view of the equity jurisdiction of the Circuit Courts of the United States. The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a federal court, is not to be conclusively determined by the statutes of the particular state in which suit may be brought. One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a state court on the same cause of action. * * * But if the case in its essence be one cognizable in equity; the plaintiff—the required value being in dispute—may invoke the equity powers of the proper Circuit Court of the United States whenever jurisdiction atttaches by reason of diverse citizenship or upon any other ground of federal jurisdiction. * * *

Under the principles which in the Federal system distinguish cases in law from those in equity, the Circuit Court of the United States, sitting in equity, can make a comprehensive decree covering the whole ground of controversy and thus avoid the multiplicity of suits that would inevitably arise under the statute. The carrier is made liable not only to individual persons for every act, matter or thing prohibited by the statute, and for every omission to do any act, matter or thing required to be done, but to a fine of from one thousand to five thousand dollars for the first offense, from five thousand to ten thousand dollars for the second offense, from ten thousand to twenty thousand dollars for the third offense and twenty-five thousand dollars for every subsequent offense. The transactions along the line of any one of these railroads, out of which causes of action might arise under the statute, are so numerous and varied that the interference of equity could well be justified upon the ground that a general decree, according to the prayer of the bills, would avoid a multiplicity of suits, and give a rem-

> edy more certain and efficacious than could be given in any proceeding instituted against the company in a court of law; for a court of law could only deal with each separate transaction involving the rates to be charged for transportation. The transactions of a single week would expose any company questioning the validity of the statute to a vast number of suits by shippers, to say nothing of the heavy penalties named in the statute. Only a court of equity is competent to meet such an emergency and determine once for all and without a multiplicity of suits, matters that affect not simply individuals, but the interests of the entire community as involved in the use of a public highway and in the administration of the affairs of the quasi-public corporation by which such highway is maintained."

All these conditions mentioned by the court as conferring jurisdiction upon a federal court of equity apply in the instant case, are set up fully in the bill and practically admitted in the answer and the agreed statement of facts.

So, in *Ex parte Young*, 209 U. S., 123, a case which involved no question of diverse citizenship, it was held that the federal court has jurisdiction on account of the questions there involved, arising under the Constitution and laws of the United States. See, also,

McNeill v. *Southern Ry. Co.*, 202 U. S., 543.
Minnesota Rate Cases, 230 U. S., 352.

We also call attention to the rate cases from Arkansas, Kentucky and Indiana, decided in connection with the Minnesota Rate Cases.

Upon the authority of these and many other familiar cases, we think there can be no question as to the jurisdiction of the United States District Court.

II.

A SWITCHING MOVEMENT, WHEREBY INTERSTATE FREIGHT IS DELIVERED OR AN INTERSTATE MOVEMENT IS ORIGINATED IS ITSELF A MOVEMENT IN INTERSTATE COMMERCE.

There would seem to be abundant authority for the proposition that a switching movement constitutes interstate commerce if the commodities switched come from without the state or are destined to points without the state. Perhaps this proposition cannot be more clearly established than by a consideration of the case of

McNeill v. *Southern Ry. Co.*, 202 U. S., 543.

In that case it appears that the Greensboro Ice & Coal Company had a coal yard served by a private spur track some distance from the main track. On account of a dispute between the carrier and the coal company in regard to demurrage, the carrier declined to places cars consigned to the coal company on this private spur track, but announced that delivery would be made upon the public team tracks of the railroad company. The North Carolina Corporation Commission was appealed to and entered an order directing the Southern Railway to deliver all cars beyond its right of way on the private siding of the coal company. All these cars originated in states other than North Carolina. This court held that the switching movement in regard to which the controversy arose was a movement in interstate commerce, using this language:

> "The cars of coal not having been delivered to the consignee but remaining on the tracks of the railway company in the condition in which they had been originally brought into North Carolina from points outside of that state, it follows that the inter-

> state transportation of the property had not been completed when the Corporation Commission made the order complained of. *Rhodes* v. *Iowa*, 170 U. S., 412."

The court further held that this action of the Corporation Commission operated as a direct burden on and a direct regulation of interstate commerce and was therefore without validity.

It is clear that the subject of switching interstate shipments has been taken over by the Congress, since the provisions of the Interstate Commerce Act are applied to this subject by the very terms of the Act, and by the practical construction put upon the Act, both by the Interstate Commerce Commission and by the courts. The Act of February 4th, 1887, defined transportation as including "all instrumentalities of shipment or carriage." It was further provided in Section 1 of the Act, "All charges made for service rendered or to be rendered in the transportation of passengers or property as aforesaid or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

It is of course clear that the delivery of property coming into the City of New Orleans from a point outside of the State of Louisiana is not complete until this switching service is actually performed. This phase of the matter is covered by the sixth stipulation in the agreed statement of facts (Tr., 15), where it appears that upon proper order from the consignee, carload freight is switched without being unloaded, and placed on the industry track of the consignee. The original Act to Regulate Commerce, it will be noted, prohibits an unreasonable charge for the delivery of property and, of course, by other and

appropriate provisions of the Act, gives to the Interstate Commerce Commission, the Federal agency created by the Act, jurisdiction over such charges. It is further provided in the Act of 1887:

> "The term 'railroad,' as used in this act shall include all bridges and ferries used or operated in connection with any railroad and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract or agreement of lease."

By the Hepburn Law, transportation is defined as embracing, among other things, "all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported." It is further provided in this Act:

> "The term 'railroad,' as used in this act shall include all bridges and ferries used or operated in connection with any railroad and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease, and shall also include all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein; and also all freight depots, yards and ground used or necessary in the transportation or delivery of any of said property."

It was by reason of these and similar provisions in the Act to Regulate Commerce that it was held by the Supreme Court that there was no authority in the States to regulate the furnishing of cars if those cars were required to move interstate shipments.

> *Chicago, R. I. & P. Ry. Co.* v. *Hardwick Farmers' Elevator Co.*, 226 U. S., 426.

The published reports of the Interstate Commerce Commission show that literally scores of cases have been decided by that body, involving rates for switching, switch-

ing practices, absorption of switching charges and every possible feature surrounding the delivery of freight by switching movement.

Waverly Oil Works Co. v. *Penn. R. R. Co. et al.*, 28 I. C. C., 621.

In re Switching Charges at Detroit, 28 I. C. C., 494.

People's &c. Co. v. *Grand Trunk Western R. R. Co.*, 27 I. C. C., 24.

Adams & Sons Co. v. *Vicksburg, S. & P. Ry. Co.*, 29 I. C. C., 52.

Lust & Merriam's Digest of Decisions of the Interstate Commerce Commission, pages 787 to 796, inclusive.

It would seem to be entirely too clear for extended discussion that, what is ordinarily known as a switching movement, whereby interstate freight is either originated or delivered, constitutes transportation in interstate commerce and is subject to the jurisdiction of the Interstate Commerce Commission, established under the commerce clause of the Constitution of the United States. Indeed, the statement of facts in this case shows that all charges for performing the switching, with which the order here under review deals, are contained in schedules filed as tariffs with the Interstate Commerce Commission, as required by the act of Congress.

It may be said, however, by the appellees, as it was argued in the court below, that this switching movement is not a part of the interstate transportation of freight; that it is a separate and independent movement performed at the instance of the consignee, of the same character as a purely local shipment, and is therefore subject to the regulating power of the State and not to that of the Nation. It may be said that the order has no applica-

tion to a movement of freight traveling on through rates, but only to such as has been legally delivered in the City of New Orleans and thereafter moved in switching service to some particular point where the consignee desires to receive it. It is of course possible to imagine a case in which delivery had been made so completely prior to the switching movement that there would arise a complete separation of the line-haul movement and the switching movement, whereby the switching movement might be properly characterized as intrastate. But the difficulty with the contention of the appellees in this regard arises from the very language of the order under review. The pertinent part of this order, bearing on the particular question now under discussion is:

> "Whether such cars are to be loaded with freight to be shipped out of the state or are loaded with freight shipped into the state."

The order provides that the switching charges established by the Louisiana Commission shall apply to cars which are to be loaded with freight to be shipped out of the state. In other words, cars placed for loading to points outside of the state are, by the terms of the order, made subject to the switching charge of the state commission. If, at the time these cars are loaded, it is known that the freight is destined to a point without the state, it takes on the character of interstate commerce from the very beginning; it is as much interstate commerce when it begins the switching movement as it is when it begins the line-haul movement. Commerce is not to be classified as interstate or state according to the way in which it is billed, as expressly held by the Supreme Court of the United States in the cases which will be referred to presently. That which determines the character of commerce as being interstate or intrastate is the intention and purpose of the shipper as to destination when

the freight begins its movement. Let us see if this is not the test applied by the Supreme Court of the United States in a line of familiar decisions.

In the very recent case of

Railroad Commission v. *Texas & Pacific R. R. Co.*, 229 U. S., 336,

where the controversy arose as to the character of shipments of staves loaded at a point in Louisiana, billed to New Orleans, the rail transportation being altogether within the State of Louisiana, it was held by the Supreme Court that this transportation was foreign and not local commerce for the reason that the staves were intended for export to foreign countries and were transported to New Orleans only for the purpose of further trans-shipment. After reviewing various cases supporting this conclusion, the court uses this language:

> "In those cases there was necessarily a local movement of freight and it necessarily terminated at the seaboard. But it was decided that its character and continuity as a movement in foreign commerce did not terminate nor was it affected by being transported on local bills of lading. The principles enunciated in the cases were that it is an essential character of the commerce, not the accident of local or through bills of lading, which determines federal or state control over it. *And it takes character as interstate or foreign commerce when it is actually started in the course of transportation to another state or to a foreign country.* The facts of the case at bar bring it within the ruling. The staves and logs were intended by the shippers to be exported to foreign countries, and there was no interruption of their transportation to their destination except what was necessary for trans-shipment at New Orleans." (Italics ours.)

Applying this test to the order in question, how can it be said that it does not affect interstate commerce when it provides in substance that the charges of the Louisiana

Commission shall apply to switching movement on cars to be loaded with freight to be shipped out of the state. That is to say, it applies to cars which the shipper knows are to be shipped out of the state at the time of the loading. Such a car must necessarily be launched upon an interstate journey when the switching movement begins. So in the case of

Texas & N. O. R. R. Co. v. *Sabine Tram Co.*, 227 U. S., 111,

it was held that lumber moving from an interior point in Texas to a Texas gulf port, where it was unloaded and reshipped on vessels to foreign ports, was foreign and not local commerce, the test applied being that such lumber was, from the beginning of the movement, destined for export. This was held in spite of the fact that the lumber was billed locally to the Texas port and changed ownership at the port. The court uses this language:

> "The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accidents, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured and shipped, and to give it a various character by the steps in its transportation would be extremely artificial."

In

Ohio Railroad Commission v. *Worthington*, 225 U. S., 101,

it was held that coal, originating at a point within the State of Ohio, shipped to a lake port on a rate which carried the coal on board the vessel, was an interstate rate and not a local rate and therefore beyond the power of the state regulating authorities to control. In reaching this conclusion, the court did not overlook the fact

that the coal was billed from one point in the state to another point in the state and the further fact that the coal is accumulated at the port in large quantities and trans-shipped after a considerable interval. It was held that what determined the character of these shipments was the fact that it was destined for trans-shipment at the port and had the character of interstate commerce at the time the transportation began.

In the case of

Southern Pacific Terminal Co. v. *Interstate Commerce Com.*, 219 U. S., 498,

a case dealing with the authority of the Interstate Commerce Commission to prescribe rates on cottonseed cake shipped from interior Texas points to Galveston and from there exported, it was held that this was a shipment in foreign commerce, the court using this language (527):

> "It makes no difference, therefore, that the shipments of the products were not made on through bills of lading, or whether their initial point was Galveston or some other place in Texas. They were all destined for export and by their delivery to the Galveston, Harrisburg & San Antonio Railway, they must be considered as having been delivered to a carrier for transportation to their foreign destination, the terminal company being a part of the railway for such purpose. The case, therefore, comes under *Coe* v. *Errol*, 116 U. S., 517, where it is said that goods are in interstate, and necessarily as well in foreign, commerce when they have 'actually started in the course of transportation to another state or delivered to a carried for transportation.'"

The same principle is strikingly illustrated in the case of

United States v. *Union Stock Yards Transit Co. of Chicago*, 226 U. S., 286.

In that case there was a controversy as to whether the Chicago Junction Railway should be required to file its tariffs with the Interstate Commerce Commission, or in other words, whether the transportation performed by this railway was subject to the Act to Regulate Commerce. The opinion of the court shows that the tracks of the Junction Company were used by the trunk lines to connect their systems of railway and to deliver shipments originating without the state to the platforms of the Stock Yards Company and that large numbers of carload lots of freight from points without the state were placed on the receiving tracks of the Junction Company bearing transfer cards showing the destination of the cars; that the Junction Company delivers these cars either to the consignee or to the receiving track of the forwarding carrier. The charges of the Junction Company were ordinarily absorbed by the line-haul carrier. Less than carload lots of freight were handled in substantially the same manner. The Junction Company issued no bills of lading but the shipper received the bill of lading direct from the trunk line; or, if the bills of lading were issued by the Junction Company, they were in the name and for the account of the trunk lines. The court, in passing upon this arrangement, uses this language:

> "In view of this continuity of operation, the manner of compensation and the performance of services in connection with interstate transportation by railroads such as are described, are the Stock Yard Company and the Junction Company subject to the terms of the Act to Regulate Commerce and bound to conform to its requirements?
>
> The Interstate Commerce Act, as amended by the Hepburn Act, 34 Stat., 584, c. 3591, Sec. 1, applies to common carriers engaged in the transportation of persons or property from state to state wholly by railroad, and the term railroad is defined to include 'all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transpor-

tation of the persons or property designated herein, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property'; and transportation is defined to include 'cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported.'

That the service is performed wholly in one state can make no difference if it is a part of interstate carriage. 'The transportation of live stock,' said this court in *Covington Stock Yards Co.* v. *Keith*, 139 U. S., 128, 136, in treating of the duties of common carriers, irrespective of the Act to Regulate Commerce, 'begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered to the consignee.' In this connection, see *Coe* v. *Errol*, 116 U. S., 517; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S., 498. * * *

Together, these companies, as to freight which is being carried in interstate commerce, engage in transportation within the meaning of the act and perform services as a railroad when they take the freight delivered at the stock yards, load it upon cars and transport it for a substantial distance upon its journey in interstate commerce, under a through rate and bill furnished by the trunk line carrier, or receive it while it is still in progress in interstate commerce upon a through rate which includes the terminal services rendered by the two companies, and complete its delivery to the consignee. They are common carriers because they are made such by the terms of their charters, hold themselves out as such and constantly act in that capacity, and because they are so treated by the great railroad systems which use them. In *Union Stock Yards Co.* v. *United States*, 169 Fed. Rep., 404, Mr. Justice Van Devanter (while a circuit judge), speaking for the Court of Appeals, said (406):

'Its (the Stock Yards Company's) operations

> * * * include the maintenance and use of railroad tracks and locomotives, the employment of a corps of operatives in that connection, and the carriage for hire over its tracks of all live stock destined to or from the sheds or pens, which, in effect, are the depot of the railroad companies for the delivery and receipt of shipments of live stock at South Omaha. The carriage of these shipments from the transfer track to the sheds or pens and vice versa is no less a part of their transit between their points of origin and destination than is their carriage over any other portion of the route. True, there is a temporary stoppage of the loaded cars at the transfer track, but that is merely incidental, and does not break the continuity of the transit any more than does the usual transfer of such cars from one carrier to another at a connecting point. And it is of little significance that the stock yards company does not hold itself out as ready or willing generally to carry live stock for the public, for all railroad companies at South Omaha do so hold themselves out, and it stands ready and willing to conduct, and actually does conduct, for hire, a part of the transportation of every live stock shipment which they accept for carriage to or from that point, including such shipments as are interstate.' "

We have quoted thus at some length from the opinion, because, in our judgment, the language quoted is really an argument in favor of appellant's contention in this case. The service described in the agreed statement of facts, to which the language of the order under attack is applicable, cannot be distinguished in principle from the movement which this court held to be interstate transportation in the Union Stock Yards case.

If it be said, however, that this case should be ruled by *Gulf C. & S. F. R. Co.* v. *Texas*, 204 U. S., 403, it is sufficient to say that this court, in the *Texas & N. O. R. Co.* v. *Sabine Tram Co. Cases, supra*, fully and carefully explained this case and distinguished it from the cases we have cited and upon which

we rely. It is perfectly clear that the so-called Texarkana case has no application to a shipment which was intended to be shipped beyond the state at the time it was loaded. It may be that switching movements, can be imagined, which are fully interstate movements, but if so, the order here under review has no application to such movements. By its very terms, it applies to cars which have come from out of the state and are being moved in switching service for final delivery and to cars being switched for further and interstate transportation. We say, therefore, that it is clear that the order applies to interstate commerce and is an attempt to regulate the same.

III.

THE ORDER, SINCE IT DEALS WITH INTERSTATE COMMERCE, IS INVALID AS ENCROACHING UPON THE EXCLUSIVE AUTHORITY OF CONGRESS.

It requires no citation of authority to establish the principle that the order of a state commission, attempting to control interstate commerce or fix a charge therefor is invalid as being beyond its power. This is the ordinary learning of the profession and will not justify extended argument. Indeed, this case furnishes a striking example of the evil of divided authority, which was pointed out in the

Abilene Case, 204 U. S., 426,

and other cases announcing the same principle. For, if the carriers must apply the charges fixed by the Louisiana Commission to switching services which are at the same time subject to the jurisdiction of the Interstate Commerce Commission, there would be that division of authority and that confusion which the court so luminously points out in the Abilene case.

IV.

THIS ORDER CANNOT BE CONSTRUED AS APPLYING ONLY TO INTRASTATE COMMERCE, AND THEREBY SAVED FROM INVALIDITY.

It will perhaps be argued, as it was argued in the court below, that it is the duty of this court to construe this order, No. 295, as applying only to intrastate commerce and having no effect whatever upon interstate commerce. Doubtless, the principle will be invoked that it is the duty of the court, in passing upon a statute, to hold it constitutional, if possible, and if there are portions of the statute which are unconstitutional and other portions in harmony with the Constitution, the invalid part should be separated from the valid part and only so much of the statute stricken down as presents clearly an instance of unconstitutional legislation. There can be no doubt about the rule, but the difficulty here lies in the fact that no such construction of this order is possible. Two considerations preclude such a disposition of the matter.

In the first place, the case was tried below upon issues which will not permit such a disposition of the case in this court. The answer filed by the defendant Railroad Commission of Louisiana does not proceed upon the theory that the order can be construed to apply only to intrastate commerce. That is to say, while of course there is a denial that the order does interfere with interstate commerce, yet the contention of the defendants, as shown by the answer, is that the switching movement, necessary to deliver or to initiate interstate movement of freight, is not in fact interstate commerce. In other words, issue is taken not upon the proposition that the switching of freight coming from or going beyond the state is covered by the order, but rather issue is taken upon the propo-

sition that such switching constitutes interstate commerce. This is clear from the following portions of the answer:

> "Twelfth. Defendants admit the truth of the allegation contained in complainant's bill of complaint, that under Section 8, Clause 3, of the Constitution of the United States, and the Act of the Congress of the United States to regulate commerce, passed on the 4th of February, 1887, and the amendments thereto, the United States have assumed and are exercising certain jurisdiction in matters relating to the regulation of interstate commerce. Defendants deny, however, the truth of the allegation contained in the bill of complaint, that the cars which may be affected by said order No. 295 are, at the time said order operates upon them, engaged in interstate commerce; further answering, defendants deny the truth of the allegation of said bill of complaint that the contents of such cars, when loaded, are, at the time such order operates upon them, interstate commerce, or that such order, if carried into effect, will be a regulation of interstate commerce and an infringement upon the jurisdiction of the United States, which defendants admit has the exclusive right to regulate interstate commerce; and that said order No. 295, is not, for reasons thus assigned by defendants, in violation of the constitution and laws of the United States, but that, on the contrary, the same was and is entirely within the power, authority and control of the Railroad Commission of Louisiana, to adopt and enforce."

It will thus be seen that it is the theory of the defendants in this case, and upon this theory the case was submitted to the court below, that the switching movement described in the agreed statement of facts is, while so being moved in switching service, not interstate commerce. The answer does not challenge the truth of the averment, that the order, by its scope, includes cars which have come from beyond the state and cars which are intended to go beyond the state. The contention rather is that the switching of cars which have come into the state and are

being delivered beyond the rails of the railroad company moving them in and cars which have been loaded with interstate freight being switched to a line-haul carrier, do not in fact constitute interstate commerce but constitute rather commerce wholly within the state and therefore subject to the regulating power of the state authorities. And to establish this contention, the learned counsel for the Railroad Commission of Louisiana directed his attention in the court below.

In the next place, it is not conceivable that the order here in effect can, by any possible construction, be limited to purely intrastate commerce. To put such a construction upon the language of the order would do violence to its plain, simple, unambiguous provisions. The order, by its terms, does not refer to intrastate commerce at all. It says that a carrier operating in the State of Louisiana must switch cars for any railroad with which it connects or any shipper or consignee at rates approved by the Commission, whether such cars are loaded with freight to be shipped out of the state or are loaded with freight shipped into the state. The order deals with only two classes of cars; one—cars which have come into the state and are being delivered by a switching movement, and the other—cars which are moving out of the state, the initial movement being in switching service. Both these classes manifestly embrace interstate commerce, and there is nothing left in the order which relates to purely intrastate commerce.

It must be remembered that this court is not, as it frequently is in passing upon cases of this character, furnished with any interpretation of the order by the highest court of the state, and this court is therefore called upon to construe this provision for itself. In construing it, it will of course put such a construction upon

it as will, if possible, save it from unconstitutionality; but, in order to accomplish this, this court will not read into the order something which is not there, nor will it modify plain and simple language, wresting it from its usual signification and put upon it a strained, if not impossible, interpretation, merely for the purpose of preventing an order from being held beyond the power of the body adopting it.

The rule which controls in matters of this sort has been referred to in the first

Employers' Liability Cases, 207 U. S., 463.

In that case it was urged that the court should hold that the statute was not meant to be applicable to intrastate commerce and should uphold it upon the ground that only interstate commerce was affected. After referring to the familiar rule that a statute should be upheld as constitutional, if possible, the court uses this language:

> "So far as the face of the statute is concerned, the argument is this, that because the statute says carriers engaged in commerce between the states, etc., therefore the act should be interpreted as being exclusively applicable to the interstate commerce business and none other of such carriers, and that the words 'any employe' as found in the statute should be held to mean any employe when such employe is engaged only in interstate commerce. But this would require us to write into the statute words of limitation and restriction not found in it. * * * The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional. But this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose. Equally clear it is, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to the legal provisions by separating them from the

> illegal. But this applies only to a case where the provisions are separable and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated."

It may be contended here that the legal should be separated from the illegal part but the difficulty about doing so is that there is no legal part of this order to separate from the other. The order deals only with two classes of switching movement, both of which, by the very terms of the order, expressly relate to commerce which must be interstate in its character. A valuable case upon this branch of the question is that of

> *Illinois Central R. Co.* v. *McKendree*, 203 U. S., 514.

In that case, there was under attack an order made by the Department of Agriculture, relating to the handling of infected cattle. The court held that this order was invalid because it applied to cattle moving intrastate as well as cattle moving interstate. This language is used:

> "The terms of order 107 apply to all cattle transported from the south of this line to parts of the United States north thereof. It would therefore include cattle transported within the State of Tennessee from the south of the line as well as those from outside of that state; there is no exception in the order, and in terms it includes all cattle transported from the south of the line, whether within or without the State of Tennessee. It is urged by the Government that it was not the intention of the Secretary to make provision for intrastate commerce, as the recital of the order shows an intention to adopt the state line, when the state by its legislature has passed the necessary laws to enforce the same completely and strictly. But the order in terms applies

alike to interstate and intrastate commerce. A party prosecuted for violating this order would be within its terms if the cattle were brought from the south of the line to a point north of the line within the State of Tennessee. It is true the Secretary recites that legislation has been passed by the State of Tennessee to enforce the quarantine line, but he does not limit the order to interstate commerce coming from the south of the line, and, as we have said, the order in terms covers it. We do not say that the state line might not be adopted in a proper case, in the exercise of federal authority, if limited in its effect to interstate commerce coming from below the line, but that is not the present order, and we must deal with it as we find it. Nor have we the power to so limit the Secretary's order as to make it apply only to interstate commerce, which it is urged is all that is here involved. For aught that appears upon the face of the order, the Secretary intended it to apply to all commerce, and whether he would have made such an order, if strictly limited to interstate commerce, we have no means of knowing. The order is in terms single and indivisible."

This case, in many of its aspects, is strikingly applicable here. We can say, as did the court in this case, that the order of the Louisiana Railroad Commission, by its very terms, applies to interstate commerce, and this court cannot, unaided by the construction of the state court, say that the Commission meant something other and different from what it said.

In addition to the language used in the order, which seems to be too plain to permit construction, we have the admission of the defendants by their answer that it was meant to be applied to interstate commerce, or what is the equivalent of such, an admission that the only dispute is whether this particular kind of switching is really interstate commerce. In

Allen v. *Pullman Company*, 191 U. S., 171,

there was presented to the court the question of whether

an occupation tax, levied by the State of Tennessee, was valid, it being contended by the Pullman Company that this was a tax upon interstate commerce. The act provided

> "That the rate of taxation on the following privileges shall be as follows: Sleeping cars. Each company doing business in the state, on each car per annum, $500.00."

This was held by the court to be a tax upon interstate commerce, this language being used:

> "In the latter act it is enacted for the privilege of doing business in the state. This business consists of running sleeping cars upon railroads not owning the cars and is precisely the privilege to be paid for under the first act, neither more nor less. In neither act is any distinction attempted between local or through cars or carriers of passengers. The railroads upon which the cars are run are lines traversing the state, but not confined to its limits. The cars of the Pullman Company run into and beyond the state as well as between points within the state. The act in its terms applies to cars running through the state as well as those whose operation is wholly intrastate. It applies to all alike, and requires payment for the privilege of running the cars of the company, regardless of the fact whether used in interstate traffic or in intrastate. There is no decision of the Supreme Court of Tennessee limiting the act in its operation to intrastate traffic. It is true that the comptroller has sought to restrain the operation of the law by imposing the tax for two years upon cars running between Nashville and Memphis and between Nashville and Chattanooga for two years, and fixing one car in each year as the proportion of local business done on interstate cars for two years. But this action does not conclude the state in taxing for other years, and the action taken by the comptroller does not limit the terms of the law affecting interstate commerce."

See also:

Leloup v. *Mobile*, 127 U. S., 640.

United States v. *Reese*, 92 U. S., 214.

The Trade Mark Cases, 100 U. S., 82.
United States v. *JuToy*, 198 U. S., 253.
Connolly v. *Union Sewer Pipe Co.*, 184 U. S., 540.

The decision of this court cannot be affected by the admission of counsel, if such is made, that the order will not be sought to be applied to interstate commerce. The menace of the order is there. It assumes to regulate and fix charges for performing interstate switching. The Constitution of Louisiana provides a penalty for every disobedience of this order. It is admitted in the answer that, under the provisions of the Louisiana Constitution, creating the Railroad Commission, penalties accrue for disobeying the order of the Commission, and that these penalties would be sought to be recovered. Thus:

> "Sixteenth. Defendants admit that, unless prohibited from so doing by a court of competent jurisdiction, they would have undertaken to enforce said order No. 295, but defendants deny that the enforcement of said order could have extended beyond the imposition of such penalties or forfeitures as the Constitution of the State of Louisiana prescribes."

As a matter of fact, the Constitution prescribes as a penalty a forfeiture of not less than one hundred dollars nor more than five thousand dollars for each violation of any of the orders of the Commission. If the order is upheld by this court, it will mean nothing less than that a penalty will be sought to be enforced by the Commission every time the appellant declines to switch a car moving in interstate commerce at the rate fixed by the Louisiana Commission, whatever that rate may be.

It may be argued here, as it was in the court below, that the action of the District Court finds support in the case of

Hampton v. *St. L., I. M. & S. R. Co.*, 227 U. S., 456.

However, that case means no more than that this court will adopt whatever construction of a state statute is put upon it by the highest court of the state. In that case, there was a finding by the State Railroad Commission that the railroad had refused to furnish cars to persons operating coal mines in the State of Arkansas and had discriminated in its distribution of coal cars among different operators. The order was attacked solely upon the ground that the act of the Arkansas legislature, authorizing such action by the Commission, was unconstitutional as regulating interstate commerce. The pertinent portions of this act were as follows: By Section 1 it was provided:

> "That, when a shipper makes a written application to a station agent of a railroad company for a car or cars to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of freight and its final destination, the railroad company shall furnish same at the place of shipment within six days from 7 o'clock A. M. the day following such application."

In the seventeenth section of the act, in an entirely separate paragraph, far removed from the one just quoted, it is provided:

> "Interstate railroad shall furnish cars on application for interstate shipments, the same in all respects as other cars to be furnished by intrastate railroads under the provisions of this act."

Manifestly these provisions are separable and one could be held invalid without in any way affecting the other. However, the important thing to remember about this case is that, prior to its decision, the highest court in the State of Arkansas, in the case of

> *Oliver* v. *Chicago, R. I. & P. R. R. Co.*, 89 Ark., 466,

had decided that this act did not relate to interstate com-

merce but was meant to provide an elaborate scheme for the regulation of intrastate railroad traffic. This court had no difficulty in setting aside that part of the seventeenth section referring to interstate commerce, but held that, in view of the decision of the Supreme Court of Arkansas, construing the act, the elimination of this invalid part did not affect the remaining portions of the act. But, in the case at bar, only one order is under consideration and this order applies not at all to intrastate commerce but, by its express terms, only to interstate commerce. We therefore insist that no construction can be put upon this act which will save it from invalidity.

V.

THE ORDER IF AFFECTING INTERSTATE COMMERCE IS INVALID NOT ONLY ON FEDERAL GROUNDS BUT BECAUSE IT VIOLATES THE CONSTITUTION OF LOUISIANA.

We announce this proposition and submit it without further argument, in view of the concluding sentence of Article 286 of the Louisiana Constitution, which provides:

> "The power of the Commission shall affect only the transportation of passengers, freight, express matter and telephone and telegraph messages between points within this state and the use of such instruments within this state."

Manifestly this was intended to negative the idea that the Louisiana Railroad Commission could do anything touching interstate commerce. If our previous argument is valid, that this order does apply to interstate commerce, manifestly the Louisiana Commission transcended the authority conferred upon it by the Constitution of Louisiana.

VI.

THE DECISION OF THE COURT BELOW BASED ON GRAND TRUNK RY. COMPANY V. MICHIGAN RAILROAD COMMISSION.

The court below dismissed the bill with the following brief memorandum opinion:

> "This case has remained on the docket long enough for the Supreme Court to indirectly decide it. See *Grand Trunk Ry. Co.* v. *Michigan Railroad Commission*, decided Dec. 8th, 1913."

It is therefore proper that we should consider this case, which will be found reported in 231 U. S., 457.

A careful examination of the facts and principles considered in this case indicates that it has no bearing whatever upon the case at bar, in so far as the instant case deals with the commerce question. The decision in the Grand Trunk case may be of some value and have some relevancy with respect to certain questions raised by the bill and answer, but it has no application whatever to the contention that the order of the Louisiana Commission undertakes to regulate interstate commerce. There was no interstate commerce question in the Grand Trunk case. The opinion of the Supreme Court dismisses this aspect of the matter in this language:

> "It is contended that the order is an interference with interstate commerce. The contention is premature if not without foundation. * * * We have seen from the statement of facts that the first concern of the Grand Trunk was the right to charge what it pleased or discriminate between the services. Inconvenience to its interstate business seems to be an afterthought. Besides, the fact of inconvenience is disputed. It is charged, it is true, in an affidavit filed by appellants; but there was a counter-affidavit and it was averred that the interchange of traffic required by the legislature of the state did not im-

pede interstate business, but, on the contrary, facilitated it and intrastate commerce, and relieved, not caused, congestion on the tracks of the various railroads in the city."

This reference in the opinion of the court can best perhaps be understood by referring to the decision of the court below, as it appears in 198 Fed., 1009. We there find that the order of the Michigan Commission did not, by its terms, in any way purport to regulate the movement of interstate commerce. The only interstate commerce question which complainant raised in the case grew out of the contention that, if the order of the Railroad Commission was enforced as to intrastate commerce, it would thereby cause the terminals of the railroad company to be congested with state commerce to the detriment of interstate commerce. This is made clear by the following excerpt from the opinion of the District Court:

"The alleged violation of the commerce clause of the federal Constitution rests upon the argument that the enforcement of the statute and the orders referred to will necessarily result in congesting the terminal facilities of complainants, and thus make it impossible for them to carry on interstate business without seriously delaying and interfering with such commerce. The statute does not embrace interstate commerce. It is confined to intrastate business. It has been so construed by the Supreme Court of Michigan. *Mich. Central R. R. Co.* v. *Michigan Railroad Commission, supra.* The statute cannot be said to interfere with interstate commerce unless such is its direct, immediate, and necessary effect. *Louisville & Nashville R. R. Co.* v. *Kentucky*, 161 U. S., 677, 701, 16 Sup. Ct., 714, 40 L. Ed., 849; *Louisville & Nashville R. R. Co.* v. *Kentucky*, 183 U. S., 503, 518, 22 Sup. Ct., 95, 46 L. Ed., 298. It is not, and cannot be, claimed that such effect results as matter of law; that is to say, it can only result because and when it is established by proofs that such is in fact the direct and necessary result of the en-

> forcement of the act and the orders of the Commission. What has already been said respecting the congestion of complainants' existing terminals, in considering the question of due process, is equally pertinent to the objection of interference with interstate commerce."

We thus see that the proceeding had no aspect whatever towards subjecting interstate commerce to direct regulation. The only argument was that interstate commerce would be interferred with because the terminal facilities of the railroad would be filled up with intrastate commerce. It was in view of this argument that this court makes its reference to the dispute as to inconvenience and congestion. Obviously this case throws no light whatever upon the question of whether the order of the Louisiana Commission is a regulation of interstate commerce.

VII.

THE EFFECT OF THE ORDER OF THE COMMISSION IS TO DEPRIVE THE APPELLANT OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

In order to represent the situation graphically, instead of in words only, there has been attached to the brief blueprints showing:

1st. The location of the Illinois Central Railroad in New Orleans.

2nd. Its principal competitors, having their own terminals at New Orleans, and in the cities of Cincinnati, Louisville, Chicago, St. Louis and Memphis.

These cities are important, not only as originating traffic, but as gateways through which traffic flows along the lines indicated in the diagram. These blueprints show nothing except such matters as the court would judicially

notice upon appeal from the United States District Court at New Orleans.

Michigan Central R. R. v. *Powers*, 201 U. S., 245, 300 (1906).

State v. *Mo. Pac. Ry. Co.*, 212 Mo., 658; s. c., 111 S. W., 500, 504 (1908).

Goodman v. *Heilig*, 157 N. C., 6; s. c., 72 S. E., 866, 36 L. R. A. (N. S.), 1004.

L. P. Worden & Son v. *Cole*, 74 Kan., 226; s. c., 86 Pac., 464, 465 (1906).

Gulf, Colorado & Santa Fe R. Co. v. *Texas*, 72 Tex., 404; s. c., 1 L. R. A., 849, 852 (1888).

The Illinois Central Railroad Company has succeeded to the ownership of one of the oldest lines entering New Orleans. The act incorporating the New Orleans, Jackson & Great Northern Railway Company is in the Laws of Louisiana of 1853, page 109. The development of the property has extended along practically the whole of the river front of the city, and it surrounds the principal part of the city with a belt, along which are located yards, depots, spurs, sidings, industrial tracks, team tracks and the enormous shipping facilities known as Stuyvesant Docks. These facilities are considered superior to those of any other line entering New Orleans and are very much superior to the terminals of the lines which have entered the city at a comparative recent date, some of which are very poorly equipped. The practical operation of the order of the Commission will be that all the terminals of the Illinois Central Railroad Company at New Orleans will be thrown open to the use of any carrier, competitive or otherwise, which is willing to absorb the switching charge which the Commission prescribes, something carriers will undoubtedly be delighted to do, as any com-

pany would gladly avail itself of the aid of the Government to exploit the terminals of its competitors in this wise. The Illinois Central Railroad Company does not regard, however, its competitors in New Orleans as being in position to make adequate return for the use of its terminals in this way. If it did, undoubtedly reciprocal arrangements would be made. Concealed behind this innocent looking order of the Commission is an adventure of enormous significance, by which the fruits of the foresight, self-denial and careful investment of the Illinois Central Railroad Company and its predecessors in the acquisition of terminals at New Orleans, are to be shared with all comers. If the order is valid, the inducement for the development of terminals is taken away, and those who enter the railroad vineyard at the eleventh hour will receive the same penny as those who bore the burden and heat of the day, or, to choose a more accurate simile, the pennies which have been accumulated by the Illinois Central Railroad Company and its predecessors during some sixty years, are to be equally divided between itself and the other railroad companies of the city.

The position taken by the Illinois Central Railroad Company at New Orleans is similar to that taken by the Louisville & Nashville Railroad Company at Louisville, and the Pennsylvania Railroad Company at Pittsburgh, whose terminals enjoy a similar pre-eminence, and indeed this attitude on the part of railroad companies which have good terminals, as to switching shipments coming from competitive points, is general throughout the country.

In the case of *Louisville & Nashville Railroad Company* v. *Central Stock Yards Company*, 212 U. S., 132, 145 (1909), by the judgment of the court below in construing certain passages in the Constitution of the State of

Kentucky, a railroad company was required to receive at the Central Stock Yards at Louisville and to "transfer, switch, transport and deliver the live stock" consigned to anyone at the Bourbon Stock Yards, in the same city, "the shipment which originates at the Central Stock Yards." (141) In considering this portion of the order, the court said (144-145):

> "There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport and deliver all live stock consigned from the Central Stock Yards to any one at the Bourbon Stock Yards. This also is based upon the sections of the constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville and Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and cannot be justified unless the railroad holds that property subject to greater liabilities than those incident to its calling alone. The Court of Appeals did not put its decision upon any supposed special liability, but upon the broad ground that the state constitution requires it and lawfully may require it of a common carrier by rail. Therefore the judgment must be reversed."

In the recent case of *Grand Trunk Railway* v. *Michigan Railway Commission*, 231 U. S., 457, 471 (1913), a portion of the above passage is quoted in a unanimous opinion of the court by Mr. Justice McKenna, who dissented in the earlier case, with this comment:

> "It will be observed that the beginning of traffic was at the Central Stock Yards, the stock yards of

> the Southern, and was to be hauled by that road to its connection with the Louisville & Nashville, and by the latter from that point to the Bourbon Stock Yards, the stock depot of the latter railroad. The yards were the terminals of the respective roads for live stock delivery, and the case turned upon the point that the roads were competitive, and that the point of delivery was an arbitrary one, and that thereby the terminal station of one company was required to be shared with the other company."

This is just what the order of the Railroad Commission of the State of Louisiana undertakes to do with competitive traffic reaching New Orleans from such points, for example, as Cincinnati, Louisville, Chicago, St. Louis or Memphis, over railroads other than the Illinois Central. It covers all points of delivery, arbitrary or otherwise. The order commands the appellant to switch cars "for any other railroad *with which it connects.*" Under this order any shipper would have the right to require one railroad company to take a car which had not yet been delivered to him in its interstate movement, and switch it from the terminal of one of these other carriers to a desired location upon the terminal of the Illinois Central, although the latter company would have been most anxious to haul the freight all the way from the point of its origin, and under the new rule required by the Louisiana Railroad Commission the Illinois Central would yield up the advantage of the desired location on its terminal to the traffic of its competitor, without receiving anything for it, except a switching charge, to be fixed by the Railroad Commission of Louisiana.

A new railroad running to New Orleans need not be at any pains to acquire freight terminals at all. It need only connect its tracks with those of the Illinois Central outside the city, and then absorb a switching

charge to be fixed by the Railroad Commission of Louisiana to points upon the terminal of the Illinois Central within New Orleans. The Illinois Central might make an arrangement to do this voluntarily and would, perhaps, be glad to make such an arrangement on non-competitive business, but this would be a very different thing from being compelled to open its terminals to competitive business from points which it serves as well as its competitors. Why should any railroad company buy terminals or even rent them when the use of terminals belonging to others can be compelled for a mere carrying charge?

It may be observed that the Interstate Commerce Commission has, in a very similar situation, refused to require the Pennsylvania Railroad Company to throw open its terminals at Pittsburgh to other lines by establishing a mere switching charge which the competitors of the Pennsylvania could absorb and under which they could obtain a virtual use of its terminals. The Commission asserted the power to make joint rates from any point upon the terminals where traffic was received by the Pennsylvania Company to points upon the railroads of other companies, but refused to go beyond this. *Waverly Oil Works Company* v. *Pennsylvania Railroad Company et al.*, 28 I. C. C., 621 (December 3, 1913). This is one of the decisions of Commissioner Prouty, and is entitled to the respect due to his unusual experience and ability as an administrative officer. From a railroad point of view, this wise and conservative decision compares favorably with the order of the Louisiana Railroad Commission, which proposes absolutely no restriction upon switching movements in interstate commerce, but subjects them all, without more ado, to the control of the Commission and requires tariffs to be established

to cover them. The Louisiana Railroad Commission in its order, not only undertakes to regulate interstate commerce in a field which has been committed by Congress solely to the Interstate Commerce Commission, but undertakes to do so without obeying the wholesome limitations of the Interstate Commerce Act, which Congress, doubtless for constitutional reasons, has imposed by which the use of the terminals of one carrier cannot be given to another (Section 3), and by which even in case of through routing a railroad cannot be deprived of its long haul unless the result would be to make the through route unreasonably long as compared with another practicable through route (Section 15).

We therefore earnestly contend that this case should be reversed with directions to sustain the bill and set aside the order of the Louisiana Commission as invalid.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1914, A. D.

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

vs.

C. L. de FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana,
Appellees.

Brief for Appellees.

HISTORY OF THE CASE.

Order No. 295 of the Railroad Commission of Louisiana, which is contested in this suit, was adopted, after a full investigation, on August 8, 1903, and is as follows:

> "No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, or any shipper, or consignee, at rates approved or established by the Commis-

> sion, whether such cars are loaded or empty, or whether such cars are to be loaded with freight to be shipped out of the State, or are loaded with freight shipped into the State.
>
> All tariffs for the service of switching cars in the State of Louisiana shall be filed with the Commission within thirty days from the date of this order, and all the Commission's rules and orders relative to rates and changes in rates will also apply to switching charges."

A certified copy of the order was attached to the answer as Exhibit "A," and is printed at the end of this brief in full, to be used in the case, by agreement of counsel, having been omitted from the transcript.

The Illinois Central Railroad Company did not comply with this order, and on February 10, 1904, filed a bill in equity in the Circuit Court of the United States, which was succeeded by the District Court of the United States, for the Eastern District of Louisiana. The members of the Railroad Commission of Louisiana and the Railroad Commission of Louisiana were made defendants, and an injunction was asked, restraining the Railroad Commissioners from enforcing or attempting to enforce the order complained of.

On the 25th day of February, 1904, Hon. Charles Parlange, United States District Judge for the Eastern District of Louisiana, after a preliminary hearing, granted an injunction **pendente lite.**

The case was finally submitted upon bill and answer, and upon an agreed statement of facts, in the United States District Court for the Eastern District of Louisiana, and, after taking the case under consideration, the court rendered the following terse opinion:

> "This case has remained on the docket long enough for the Supreme Court to indirectly decide it. (See Grand Trunk Railway Company, et al., vs. Michigan Railroad Commission decided December 8, 1913.) The restraining order heretofore issued will be recalled and set aside and the bill dismissed without prejudice." (Tr. 17.)

Subsequently , a decree was entered in accordance with this opinion, whereupon the Illinois Central Railroad Company took an appeal directly to this court upon the ground of the unconstitutionality of the order, the appeal operating as a supersedeas.

The pertinent facts upon which the Commission's order is based are:

1. That previous to the adoption of the order, track connections existed between the principal railroad lines in the State of Louisiana, both at junctions and at terminal points, and that complainant's tracks and terminals at New Orleans connect with all other railroads entering that city.

2. That through routes were thereby established and rates for the transportation of freight via these

through routes to be delivered at the terminals of most of the lines in the State existed then, and previous to the time the order was adopted, and have continued to exist, having been changed in minor particulars from time to time. Such through routes and the rates applicable thereto are not disturbed.

3. That new contracts have been made from time to time for the transportation of freight over the various lines in Louisiana for delivery at terminals and new tariffs containing through rates, and separate tariffs containing switching and terminal charges, to apply on shipments switched from one line to another at terminal points, including New Orleans, have been published and filed, both with the Railroad Commission of Louisiana and with the Interstate Commerce Commission, by the Illinois Central Railroad Company. These tariffs are not disturbed by the Commission's order.

4. The Illinois Central Railroad Company is a party to many such tariffs and actually handles freight offered it by its connections, and delivers freight to its connections at junction points, and at New Orleans, and other terminal points, wherever it has track connections, on through rates, when they exist.

5. The order of the Commission here attacked does not interfere with the rates transporting the shipment to the junction or terminal, and would have no effect where a through rate is in effect, or where there are arrangements in tariffs for interline or intercity switching; but only applies before or after the "line haul" begins, and where no through rates and arrangements exist.

6. The Railroad Commission of Louisiana has not prescribed a tariff of rates which shall be charged for the service of switching cars from one connecting line to points on another connecting line, either at junction points or at terminals, and therefore confiscation is not an issue.

7. That there is a public necessity for intercity switching without discrimination.

8. The Commission's order applies only to points where there are existing track connections.

9. The city ordinances of the city of New Orleans specially provide that the Illinois Central Railroad Company shall switch cars over its tracks in the city of New Orleans at reasonable rates.

10. The order requires a transportation service to be performed without discrimination. It is in no particular distinguishable in principle from orders or statutes requiring track connections, and the prompt handling of cars, and such statutes

and orders have been upheld as not violating the constitution.

11. The order is not in conflict with the provisions of the Act to regulate commerce.

12. The order does not compel the appellant to give the use of its tracks and terminal facilities to any other railroad. It only regulates their use in a proper manner.

12. The order is not in conflict with the doctrines laid down in Louisville & N. R. R. Co. vs. Stock Yards Co., 212 U. S. 132, or McNeil vs. Southern Ry. Co., 202 U. S. 545.

13. Nor is it controlled by the Sabine Tram Case, 227 U. S. 111.

14. This case is governed by the doctrines announced in Grand Trunk Ry. Co. vs. Michigan Railroad Commission, 231 U. S. 457, Gulf, Colorado & Santa Fe R. Co. vs. Texas, 204 U. S. 403, and Chicago, Milwaukee & St. Paul R. Co. vs. Iowa, 233 U. S. 334.

15. Since a carrier cannot refuse to switch cars for its connections at junctions when adequate compensation is paid for the service, it must perform this service without discrimination. It can not switch for one connecting carrier or shipper and refuse to switch for others.

16. The value of the terminals is important only in determining what compensation is reasonable

for the service performed, a question not here involved.

17. The order does not impose a burden upon, but is in aid of, interstate commerce.

I.

The Railroad Commission of Louisiana has power and authority to adopt Order No. 295. The laws of the State of Louisiana require railroads operating in Louisiana to perform the service.

The laws of Louisiana applicable to such cases, and the authority of the Railroad Commission to establish the rule which is here attacked, are contained in the articles of the Constitution of Louisiana.

Article 263 of the Constitution of 1898, of Louisiana, which is a reproduction of Art. 235 of the Constitution of 1879, provides that:

> "The exercise of the police power of the State shall never be abridged nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the State."

Article 271 of the Constitution of Louisiana, which is a reproduction of Art. 243 of the Constitution of 1879, is as follows:

> "Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and connect at

the State line with railroads of other States. **Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.**"

Article 272 of the Constitution of Louisiana provides:

> "Railways heretofore constructed, or that may be hereafter constructed in this State, are hereby declared public highways, and railroad companies common carriers."

This was also a part of the State Constitution of 1879, as Article 244.

Article 284 of the Constitution of Louisiana defines the power and authority of the Commission, and is as follows:

> "Art. 284. The power and authority is hereby vested in the commission, and it is hereby made its duty, to adopt, change or make reasonable and just rates, charges and regulations, to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates, and telephone and telegraph charges, to correct abuses, and prevent unjust discrimination and extortion in the rates for the same, on the different railroads, steamboat and other water craft, sleeping car, express, telephone and telegraph lines of this State, and to prevent such companies from charging any greater compensation in the aggregate for

the like kind of property or passengers, or messages, for a shorter than a longer distance over the same line, unless authorized by the commission to do so in special cases; to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and to require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines with which they connect, and to enforce the same by having the penalties hereby prescribed inflicted through the proper courts having jurisdiction.

The commission shall have power to adopt and enforce such reasonable rules, regulations, and modes of procedure, as it may deem proper for the discharge of its duties, and to hear and determine complaints that may be made against the classification or rates it may establish, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts, required or authorized by these provisions. The Commissioners shall have power to summon and compel the attendance of witnesses, to swear witnesses, and to compel the production of books and papers, to take testimony under commission, and to punish for contempt as fully as is provided by law for the district courts."

While the law does not specifically state that the orders of the Commission shall be **prima facie** correct, all of the decisions which have been so far ren-

dered by the State and Federal Courts recognize that the presumption of reasonableness attaches to the orders of the Commission whenever there has been an investigation and a full opportunity allowed for a hearing.

Railroad Com. of La. vs. Cumberland Tel. & Tel. Co., 212 U. S. 414, 53 L. ed. 577.

Texas & Pac. Ry. Co. vs. Railroad Com. of La., 192 Fed. 280, 112 C. C. A. 538, affirmed by U. S. Supreme Court, 232 U. S. 338, 53 L. ed. 630.

Thompson vs. Railroad Commission of La., et al., 198 Fed. 691.

T. & P. Ry. Co. vs. R. R. Com. of La., 127 La. 387, 53 South 660; M. L. & T. R. R. & S. S. Co. vs. R. R. Com. of La., 127 La. 636, 53 South 890.

II.

The order was directed against all railroads operating in the State of Louisiana.

It is admitted by plaintiff that Order No. 295 was adopted by the Railroad Commission of Louisiana after a full hearing and investigation (Tr. 16). Afterwards, the Commission reached the opinion that a rule relative to switching charges at points where switching may be done or is necessary was a reasonable requirement in the interest of commerce. Before making its Order No. 295 final, upon the application of the Illinois Central Railroad Company,

the Commission reopened the case, took additional evidence and heard further arguments. The carrier at that time (October 3, 1903) presented its case as fully as it considered necessary. On December 16, 1903, with this record before it, the Commission, after giving further consideration to the order, and its requirements, determined that it was both reasonable and necessary and refused to modify or alter its original terms.

Therefore, it cannot be said that the Commission's action in adopting the rules complained of was arbitrary.

III.

The order contested does not deprive the appellant of its liberty to contract, nor of its property without due process of law, nor does it deny it the equal protection of the laws, in violation of the fourteenth amendment.

One of the contentions made in the bill of complaint is that the complainant will be deprived by the order attacked of the privilege of entering into just, reasonable and legal contracts relative to its property.

The Court has considered this question and decided adversely to complainant's contention.

In the case Wisconsin vs. Jacobson, 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, this contention was considered and rejected as being without merit.

The controversy was similar in many respects to the one in this case.

In Atchison, T. & S. F. R. R. Co. vs. Denver R. R., 110 U. S. 701, 28 L. ed. 291-297, the defendant in error was seeking to require the Atchison, Topeka & Santa Fe Railroad to interchange freight, and the defense of the Santa Fe was that such a requirement would interfere with its contracts with other lines. The Court decided that such a relief was legislative and not judicial, but went very fully into the discussion of the equities presented. Discussing the question of contractual rights, the Court said:

> "The Legislature cannot take away the right to a physical union of two roads, but whether a connecting business shall be done over them after the union is made depends on legislative regulation or contract obligation."

In closing the case, the Court says:

> "The vital question in this case as it now comes before us is whether the relief required is legislative in its character or judicial. We think it is legislative and that, upon the existence of facts, a court of chancery can afford no remedy."

The Court is now reviewing a case of legislative action, the Railroad Commission of Louisiana having acted in accordance with a grant of power, and an obligation conferred upon it by the Constitution of the State of Louisiana.

In Chicago, Milwaukee & St. Paul Railway Company vs. Iowa, 233 U. S. 334, 58 L. ed. 988, Sup. Ct. Rep. 334, the insistence was that an order of the State Railroad Commission of Iowa requiring a railway carrier to accept reshipments in the cars of other carriers deprived the carrier of the liberty of contract, and of its property without due process of law, contrary to the fourteenth amendment. But the Court rejected this contention, saying:

> "Further, the plaintiff in error insists that the enforcement of the order would deprive it of its liberty of contract and of its property without due process of law, and would deny to it the equal protection of the laws, in violation of the fourteenth amendment. We find these objections to be without merit. It was competent for the State, acting within its jurisdiction, and not in hostility to any Federal regulation of interstate commerce, to compel the carrier to accept cars which were already loaded and in suitable condition for transportation over its line. The requirement was a reasonable one. It cannot be said that the plaintiff in error had a constitutional right to burden trade by insisting that the commodities should be unloaded and reloaded in its own equipment. Upon this point the case, M. & P. R. Co. vs. Jacobson, 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, is decisive. There is no essential difference, so far as the power of the State is concerned, between such an order as we have here and one compelling the carrier to make track connections, **and to receive cars from connecting roads, in order**

> **that reasonably adequate facilities for traffic may be provided.** (Our gothic.) See also Minneapolis & St. L. R. Co. vs. Minnesota, 186 U. S. 257, 263, 46 L. ed. 1151, 1156, 22 Sup. Ct. Rep. 900; Atlantic Coast Line R. Co. vs. North Carolina Corp. Commission, 206 U. S. 1, 19, 27, 51 L. ed. 933, 941, 945, 27 Sup. Ct. Rep. 585 11 Ann. Cas. 398; Missouri P. R. Co. vs. Kansas, 216 U. S. 262, 54 L. ed. 472, 30 Sup. Ct. Rep. 330; Grand Trunk R. Co. vs. Michigan Railroad Commission, 231 U. S. 457, 468, ante, 310, 317, 34 Sup. Ct. Rep. 152."

This doctrine is applicable in this case. The State of Louisiana, acting through its Railroad Commission, is seeking to compel the railroads operating in the State to accept and transport cars which are already loaded when tendered them at proper places. And we think the requirement of the order of the Railroad Commission goes no further than to require that reasonably adequate facilities be furnished for the accommodation of traffic.

In the Detroit Switching Case, 231 U. S. 457, the Court held that the requirement that cars shall be transported from one point to another, in the city of Detroit, by the Grand Trunk Railway Company, on its terminals, was not taking of property without due process, and, on this point, says:

> "As we have determined that the tracks or terminal facilities of appellants are not taken by the order of the Commission, we need not consider a subdivision of which provides that nothing in the act shall be construed as requir-

> ing any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business."

The Commission has said no more than that all who desire to do so may receive switching service under the same terms and conditions. This is not taking property. The carrier has assumed the responsibility of permitting the use of its terminals, at reasonable rates, by its mere incorporation.

The question of discrimination in the use of facilities was the only issue before the Commission in this case.

If the carrier owes a duty, and the order of the Commission goes no further than to require the performance of that duty, there is no taking of property without due process. It is regulation of the use of the property in its broadest sense.

The duty of railroads to avoid unjust discrimination is no longer questioned. The right of the State Commission to remove such discrimination when it is found to exist, insofar as it affects the commerce of a State, is clear, and State action, having the removal of unjust discrimination as its only object, should not be disturbed because, incidentally, interstate commerce may be affected.

If the State Commission may not regulate the instruments of commerce within its borders so as to prevent unjust discrimination, it is, in effect, saying

that the carrier, not the Commission, shall determine upon the use to which its railroad and facilities may be put and the terms and conditions upon which they may be used. It resolves itself at last into the deduction that the Commission's power to regulate is limited to certain portions of a railroad and does not include the entire railroad. This contention is destroyed by the interpretation placed upon the law by both the Federal and State Courts, and it is no longer an open question that the Commission's power to regulate embraces the entire business and plant of the thing subject to its regulation. So long as the rates allowed by the Commission are reasonable the carrier cannot complain that its property is taken without due process of law. It is not in any sense unreasonable for the State Commission to require the performance of a common law duty.

IV.

There is no encroachment upon the federal exercise of power by the order of the Railroad Commission of Louisiana which prescribes a reasonable regulation in aid of commerce, and which prevents unjust discrimination in intracity switching.

The Railroad Commission of Louisiana was dealing with the relation between carriers and shippers when it adopted its Order No. 295, and, while the relationship between the carriers themselves has been

made an issue in complainant's bill, it is only an incidental result and an indirect consequence of the Commission's requirement. The laws of Louisiana have placed upon the carrier the duty of opening its line to the commerce of the State, and if in performing this duty it follows that the interstate shipper will be benefited by the Commission's ruling it is no impediment to an exercise of its authority which guarantees the free flow of commerce.

In order to successfully invoke the exclusiveness of federal control over the commerce which the State seeks to regulate, it must be shown that the State law which is attacked is in collision with the federal constitution, or an act of Congress which it is claimed excludes the State from acting. Switching of cars at junctions and at terminals is undoubtedly, in some cases, a part of the movement of the interstate as well as intrastate traffic, **but in most cases the service is performed wholly within one State and either before or after the shipment has begun or has completed its transportation.** It is only interstate commerce when performed as a part of the interstate movement on a through rate or bill of lading under tariff authority.

In Mobile County vs. Kimbal, 102 U. S. 586, 26 L. ed. 240, it is said:

> "The improvement of harbors, bays and navigable rivers within the states may be regulated by state authority, if it does not impair their free navigation as permitted under the

> laws of the United States, nor defeat any system for the improvement of their navigation provided by the federal government."

The authority for the proposition that the State may regulate a switching movement that is purely interstate, because it preceeds or follows transportation, on a separate and distinct contract and rate, is found in numerous decisions, some of them quite recently announced. In Louisville & Nashville R. Co. vs. Higdon, 234 U. S. 592, 58 L. ed. 1484, Sup. Ct. Rep. 592, the Court announces this very clear rule:

> "The State has full authority over shipments purely intrastate, and the facts set up in the second amended answer that the requirement made at Henderson might be made at other points in the state and would result in an unnecessary and unreasonable burden upon interstate commerce, only avers an indirect effect upon such commerce of the exercise of a right clearly shown within the authority of the State; and being only of that indirect and consequential character, it does not deprive the railroad company of rights secured by the commerce clause of the Constitution of the United States."

Appellant contends that the order complained of violates the Act to Regulate Commerce, Section 3.

Section 3 of the Act to Regulate Commerce provides:

> "That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreason-

able preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and **charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.**"

V.

The order of the Louisiana Commission does not require the Illinois Central Railroad Company to give the use of its terminals to its connections.

The appellant urges upon the Court, as a reason for declaring the order contested invalid, that it requires appellant to give the use of its terminals to its connecting lines, which, it is claimed, is specially provided against in Section 3 of the Act to Regulate Commerce, approved February 4, 1887. The clause invoked to support the contention is:

> "But this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

The law places all of the rairload and its appurtenances under the Commission's control. The Commission must act reasonably, but beyond that restriction its powers are not limited.

However, assuming that the argument will be made by the eminent counsel for the appellant that the order of the Louisiana Commission does require it to give its terminals to its connecting lines, and is therefore unreasonable, we say, in reply, that it is only the use of the terminals, upon the payment of adequate compensation that is sought, and that use the appellant owes, and the public can demand, by virtue of the terminals being a part of the property of a common carrier devoted to public use and benefit.

The last clause of Section 3 of the Act to Regulate Commerce is not a limitation upon state action, and there is no such provision in the laws of Louisiana. This provision of the interstate commerce act, in the case of State of Iowa vs. C., M. & St. P. R. Co., 33 Fed. 391, was declared by Judge Shiras not to be an exclusion of the authority of the state to regulate intrastate traffic, or to deal with the instrumentalities of interstate commerce.

It was urged by the defendant railroad that in requiring the case of one carrier to be switched over the tracks of another carrier in Dubuque, interstate commerce was regulated, since the cars were filled with property brought into Iowa from other states. The Court declared that the tracks of the defendant carriers in the city of Dubuque must have been there laid to be public and open to the use of the citizens.

> "Certainly it cannot be said that upon the face of it it clearly appears that by imposing this duty upon the defendant company to be paid therefor, the state is interfering with or regulating commerce between states. All that is sought to be done is to fix the rate to be charged by the defendant company for certain work which it has assumed to do, not by reason of its character as a common carrier, but as a consideration which the company agreed to do and perform for the privilege of laying down the side tracks in question. The facts averred in the record do not certainly show that the question of interstate commerce is necessarily involved in the case."

It was then urged by the defendant that the action of the Commission was in contravention of the last clause of Section 3 of the interstate commerce act as to the use of tracks for terminal facilities, but the Court declared:

> "The meaning of this clause is clear. It simply declares that the preceeding provision of the section shall not be deemed to give the right to one carrier to use the tracks or termi-

> nal facilities of another carrier in the like business. It has reference to the effect of the act of Congress, and nothing else. If the defendant company, by a contract with the city of Dubuque, has bound itself to allow other companies to use part of its tracks or terminal facilities, this clause of the act of Congress does not affect such a contract or the enforcement thereof. So, also, if the State of Iowa has provided by proper statute that different companies may have a joint or common use of certain terminal facilities, the rights of the several companies to such joint use are not affected by the provisions of the interstate commerce act, but the same must be measured and determined by the statutes of the state."

We insist, therefore, that the clause in the federal act should not be construed as a limitation upon the power of the state. The order does not contravene an express regulation of the federal government as to local interchange of traffic of the character here in question.

Indeed, the Interstate Commerce Commission, in the case of St. Louis, Springfield & Peoria Railroad, et al., vs. Peoria & Pekin Union Railway Co., 26 I. C. C. 226, views the situation relative to intracity switching as we do, as is shown by the following language:

> "The Commission has felt constrained in applying the Act to Regulate Commerce to observe the apparent inflexible requirement of this provision. To order these defendants to receive and switch cars which have beentrans-

ported to Frederick over the lines of their rivals would apparently be to require them within the meaning of the act to open their terminals to their competitors, and this is forbidden. We are therefore obliged to hold in the present case that we have no authority to grant this reasonable request of the complainants.

Let it be noted that this is not an application in any sense for the estabilshment of through routes and joint rates. If shippers upon the Frederick Railroad at points other than Frederick, or if that railroad itself were demanding the establishment of through routes and joint rates, an entirely different question would be presented, and that question is not here considered. The purpose of these complainants is simply to obtain access by a purely switching movement from their industries located upon the terminals of the Frederick Railroad to and from the Baltimore & Ohio and the Pennsylvania."

In a recent case before the Interstate Commerce Commission, the Pennsylvania Railroad Company assumed the position that this provision in the Act protected it from throwing open its terminals to the use of other railroads, and sought protection behind the shadow of the clause just quoted. The Interstate Commerce Commission discussed this question fully in its decision, in the case of Merchants & Manufacturers' Association of Baltimore, et al., vs. Pennsylvania Railroad Company, et al. (23 I. C. C. Rep. 474), from which we have taken the following excerpts:

"But if defendants are now allowing such use of their tracks or terminal facilities, the proviso of Section 3 can have no application here."

"In expounding this theory, counsel for one of the defendants stated: 'We have, by the fixing of $30 per car, done what Section 3 tells us to do—protect ourselves from our competitors.' It was explained that a low switching charge would be readily absorbed by a competing carrier possessing inadequate terminals or none at all, and the carrier owning the terminals would lose the revenue it might otherwise obtain for the line haul. It is admitted, however, that there was no distinction between the collection of charges for interchanging competitive and non-competitive traffic. Consequently, there are instances where it is not possible for the terminal road to get a line haul. But the terminals are either open or they are not; and if a carrier holds itself out as ready to permit the use of its tracks at a certain charge, the fact that such charge may be prohibitive does not mean that the terminals are not open. On the contrary, it would seem to be a potent argument for the reduction of the charges for the use of tracks or terminal facilities already extended. But it is urged that if these terminals have been opened they have been opened to the shippers on the lines of other carriers and not to the carriers themselves. If this means that the terminals are open to receive cars tendered by another carrier but not opened to the trains or locomotives of such carrier, the distinction has no application here for no such use is sought and

none could follow any order that we might issue in this proceeding."

* * * *

"That these defendants offer each to the other their respective tracks or terminals is shown by the fact that freight is actively interchanged after its arrival at Baltimore, and for this service charges are provided in tariffs published and filed both with this Commission and with the Public Service Commission of Maryland. It follows that having elected to perform this service, the charge therefor must be reasonable."

* * * *

"In considering the question of reasonableness we wish to confine ourselves to shipments arriving in Baltimore over one line consigned to a point on another line, or shipments arriving over one line and reconsigned under proper tariff authority to points on another line, **for it can readily be assumed that under the illustration taken from complainant's brief cases will arise where the interstate character of the shipment has terminated before its intracity movement begins.** The reasonableness of these charges as applied to intrastate shipments is now before the Public Service Commission of Maryland upon complaint filed by the same interests."

* * * *

"These carriers have opened these channels of interchange between their respective terminals, and, as to traffic from some territories, have provided charges which are not shown to be unreasonable for the interchange

> of service. On traffic from other territories they have fixed charges which obviously are intended to be prohibitory. This we regard as unduly discriminatory."

It will be noted that the Interstate Commerce Commission in this case confined itself to "shipments arriving in Baltimore over one line consigned to a point on another line, or shipments arriving over one line and reconsigned, under proper tariff authority, to points on another line, for it can readily be assumed that under the illustration taken from complainant's brief, cases will arise where the interstate character of the shipment has terminated before its intracity movement begins." And it is only upon such switching movements, viz., those where the intracity movement preceeds or follows the transportation, or "line haul," that the order of the Louisiana Commission operates.

In Louisville & Nashville R. Company vs. Commonwealth of Kentucky, 161 U. S. 677, 40 L. ed. 859, the Court reviewed a decree of the Court of Appeals of the State of Kentucky, in favor of the Commonwealth of Kentucky, plaintiff, against the L. & N. R. R. Company, injoining a proposed agreement for the consolidation of that railroad with certain other railroads. The consolidation was prohibited by Article 201 of the Constitution of Kentucky.

The contention was made by the Louisville & Nashville R. R. Company, plaintiff in error, that "the

assumption of a right to prohibit the consolidation of parallel and competing lines is an interference with the power of congress over interstate commerce."

Answering this contention, the Court replied:

> "It has never been supposed that the dominant power of Congress over interstate commerce took from the states the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers. Nearly all of the railways in the country have been constructed under state authority, and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves, necessarily, the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce and forbid interference therewith; while to the states remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests."
>
> * * * *
>
> "But little need be said in answer to the final contention of the plaintiff in error, that the assumption of a right to forbid the consolidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. The same remark may

be made with respect to all police regulations of interstate railways. All such regulations interfere indirectly, more or less, with commerce between the states, in the fact that they impose a burden upon the instruments of such commerce, and add something to the cost of transportation, by the expense incurred in conforming to such regulations. These are, however, like the taxes imposed upon railways and their rolling stock, which are more or less according to the policy of the state within which the roads are operated, but are still within the competency of the legislature to impose. It is otherwise, however, with respect to taxes upon their franchises and receipts from interstate commerce, which are treated as a direct burden. There are certain intimations in some of our opinions, which might perhaps lead to an inference that the police power cannot be exercised over a subject confined exclusively to Congress by the Federal Constitution. But, while this is true with respect to the commerce itself, it is not true with respect to the instruments of such commerce."

In requiring that:

> "No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are loaded or empty, or whether such cars are **to be loaded** with freight **to be shipped** out of the state, or are loaded with freight shipped into the state,"

the Railroad Commission of Louisiana simply provided a rule which prohibits a railroad in Louisiana

from refusing to perform an obligation it owes as a common carrier, and prevents any unjust discrimination in the use of a railroad's "appurtenances," or instruments of commerce.

It was but saying, in other words, what is commanded by Article 271 of the Constitution of Louisiana, in positive terms, that:

> "Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination."

VI.

The regulating power of the Railroad Commission of Louisiana extends over the carrier and all of its appurtenances.

The orders of the Railroad Commission of Louisiana have frequently been reviewed by the State and Federal Courts, and the powers of the Commission are broad enough to reach every "service" performed by a common carrier in the State of Louisiana affecting the public. It may not encroach upon Federal authority, and has not done so in this case. The duty imposed by the order in controversy is in the interest of public welfare. It goes no further than to prevent unjust discrimination.

The power of the Louisiana Railroad Commission to regulate railroads is defined by the Supreme

Court of Louisiana in broad and comprehensive terms. In one of the earliest decisions of the Supreme Court of Louisiana, concerning the powers of the Louisiana Commisison, there is an able discussion by the late Chief Justice Nicholls of the power of regulation possessed by the Commission. In this decision the Court refers in the following language, to the article of the Civil Code which defines the object for which corporations are created, and to the powers of the Commission:

> "Article 448 of our Civil Code declares the use of corporations to be to contribute, by the union and assistance of several persons, to the promotion of some object of general utility, although they be at the same time established for the advantage of those who are members of such corporations.
>
> It will be seen from this that the object and motive of the State in granting corporate rights is to promote the public welfare. The acceptance of these rights by the incorporators is in aid of that object, though their primary motive and purpose is to derive gain and profit to themselves. What is here said of 'corporate rights' applies equally to the grant of public franchises and privileges, and their acceptance."
>
> * * * *
>
> "The conflicting interests between the corporations and the State are safeguarded by the officers of the former, on the one hand, and by the Railroad Commission, on the other. The power, authority and duty of the latter are

> not limited merely to matters affecting the public safety or the public health. They extend also to matters concerning public comfort and public convenience, and in the consideration of matters of comfort and convenience the number of persons who may be concerned or interested in some particular matter at some particular point enter as important factors in determining what is proper to be done. The Commission cannot ignore the comfort and convenience of numbers of citizens on a line of travel or conveyance to base their action exclusively upon a consideration of the amount of dollars and cents which may be involved. As a matter of course, the Commission could not, even under expressly delegated powers, act arbitrarily in a manner such as to trench upon the rights of corporations secured to them by law; but, within certain limits, though their action and orders are all subject to review, they are not all subject to reversal."

In the same decision the Court says of the Commission:

> "It is an administrative board created by the State for carrying into effect the will of the State as expressed by its legislation."

In the case of Railroad Commission of Louisiana vs. Kansas City Southern Railroad Company, 111 La. 33, 35 South. 487, the Supreme Court of Louisiana gives the broadest meaning possible to the word "regulate," as contained in Article 284 of the Constitution of the State of Louisiana.

> "The word 'regulate' has a broad meaning. We think it includes the power to see to the maintenance of the main track and all its

> switches and spurs as they were at the time of taking charge, and the power to prevent any change when reasonably, in public interest, no change should be made."

In Thompson vs. Railroad Commission of Louisiana, 198 Fed. Rep. 691, the United States District Court for the Eastern District of Louisiana, in passing upon an order of the Commission fixing rates, said:

> "The Railroad Commission of Louisiana has the authority and it is its duty to establish reasonable and just rates of transportation within the confines of the State. In doing so they may adopt a mileage, or any other recognized form of schedule; **they may order the carrier to desist from giving special privileges;** and they may raise or lower existing rates as may be necessary, provided the rates adopted are reasonable and just."

In the light of these decisions there can be no question as to the Commission's authority to "regulate" the "service" of the carrier and **all of its appurtenances.** Its terminals, its switches, its sidetracks, its depots, are all appurtenances—parts of its railroad system.

It is not contended here, nor does the Commission in its order attempt to say, that a railroad company may be required to give the use of its facilities to its connecting lines **free of charge, or at rates which would be unreasonably low.** There is no attempt to fix the rates. This has been left to the car-

riers, although it may be stated here that if the Commission may regulate the service of the terminals, it may also prescribe reasonable rates for their use. Should the carriers publish switching rates which are unreasonable, the Commission has power and authority to hear complaints against such rates, and to fix reasonable rates. If the rates it fixes are confiscatory, the carrier can appeal to the courts. There is ample remedy provided by the laws of Louisiana against an unreasonable or arbitrary exercise of power by the Louisiana Commission. The articles of the Constitution of Louisiana safeguarding the rights of carriers against injury which may result from the adoption by the Commission of an unreasonable order are:

> Art. 285. If any railroad, express, telephone, telegraph, steamboat and other water craft, or sleeping car company, or other party in interest, be dissatisfied with the decision or fixing of any rate, classification, rule, charge, order, act or regulation, adopted by the Commission, such party may file a petition setting forth the cause of objection to such decision, act, rule, rate, charge, classification or order, or to either or to all of them, in a court of competent jurisdiction, at the domicile of the Commission, against said Commission as defendant, and either party to said action may appeal the case to the Supreme Court of the State, without regard to the amount involved, and all such cases, both in the trial and appellate courts, shall be tried summarily, and

by preference over all other cases. Such cases may be tried in the court of the first instance either in chambers, or at term time; provided, all such appeals shall be returned to the Supreme Court within ten days after the decision of the lower court; and where the Commission appeals, no bond shall be required. No bond, advanced costs or security for costs shall be required of said Commission in any case.

Art. 286. If any railroad, express, telephone, telegraph, steamboat, or other water craft, or sleeping car company, subject hereto, directly or indirectly, or by any special rate, rebate, or any other device, shall intentionally charge, demand, collect, or receive from any person, firm or corporation, a greater or less compensation for any service rendered by it, than it charges, demands or receives from any other person, firm or corporation, for doing a like and contemporaneous service, or shall violate any of the rates, charges, orders, rules or decisions of said Commission, such railroad, or steamboat, or other water craft, express, telegraph, telephone, or sleeping car company, shall forfeit and pay to the State not less than One Hundred Dollars nor more than Five Thousand Dollars, to be recovered before any court of competent jurisdiction, at the suit of the State, at the domicile of the Commission.

Provided, that every order or decision of the Commission fixing and establishing a rate or charge for the transportation of passengers or freight, or for the transmission of messages or conversations by telephone or telegraph, within the State shall go into effect at such time as may be fixed by the Commission and shall remain in effect and be complied with,

unless and until set aside by the Commission, or by final judgment of a court of competent jurisdiction, rendered on final trial in a suit to set aside and annul the same.

Provided, that, whenever any rate, charge, rule, regulations, order or decision of the Commission is contested in court, as provided by this Constitution, or by any amendment thereto, and the same is maintained on final trial by a court of competent jurisdiction, the railroad, express, telephone, telegraph, steamboat or other water craft, or sleeping car company, or corporation contesting the same, shall forfeit and pay to the State of Louisiana the sum of not less than Ten ($10.00) Dollars, nor more than Fifty ($50.00) Dollars per day, for each day that the putting into effect and operation of the rate, order, charge, rule, regulation, or decision of the Commission may have been suspended by such suit, to be found and adjudged by the court in which such suit may be brought; and in all such cases the said court shall, in its judgment, maintaining said rate, charge, rule, regulation, order or decision, enter up a decree and judgment against the plaintiff therein, condemning such plaintiff to pay to the State of Louisiana the amount of the said penalty of forfeiture so found and adjudged by it, which amount, after deducting therefrom the attorney's fees provided by this Constitution, shall, when collected, be paid into the State Treasury for account of the General School Fund of the State. The power and authority of the Commission shall affect and include not only the transportation of passengers, freight, express matter, and telegraph and telephone messages between points with-

> in the State, and the use of such instruments within the State, but shall also affect and include all matters and things connected with and concerning the service to be given by railroad, express, telephone, telegraph, steamboat and other water craft, and sleeping car companies, and corporations in the State, and their operations within the State.

The Supreme Court of the United States has likewise held that the power of the State to regulate railroads extends to securing to the public reasonable facilities for making connections between different carriers.

Atlantic C. L. R. Co. vs. North Carolina Corp. Com., 206 U. S. 1, 51 L. ed. 933.

The Court in this case, speaking of the power of the North Carolina Corporation Commission to require an extra train to be run on the Atlantic Coast Line in order to make a connection with the Southern Railway Company at Selma, says:

> "This reduces itself to the contention that, although the governmental power to regulate exists in the interest of the public, yet it does not extend to securing to the public reasonable facilities for making connection between different carriers. But the proposition destroys itself, since at one and the same time it admits the plenary power to regulate and yet virtually denies the efficiency of that authority. That power, as we have seen, takes its origin from the quasi-public nature of the business in which the carrier is engaged, and embraces that business in its entirety; which,

> of course, includes the duty to require carriers to make reasonable connections with other roads, so as to promote the convenience of the traveling public."

It is true that in this case there was no question of using the terminals of a carrier, but we see in it a principle which cannot be overlooked here, namely, that the power of regulation by the State extends over the entire business of a common carrier, within its proper sphere.

As was said by the Interstate Commerce Commission in the case of Merchants & Manufacturers' Association vs. Pennsylvania Railroad Company (23 I. C. C. 474):

> "But terminals are either open or they are not; and if a carrier holds itself out as ready to permit the use of its tracks at a certain charge the fact that such charge may be prohibitive does not mean that the terminals are not open."

The fact that the complainant does allow the use of its terminals in New Orleans and at other points under certain conditions and at certain charges fixed by the carrier settles beyond dispute the fact that these terminals are open. Being open the Commission has the power to regulate their use. This is as far as the order goes.

> "The elementary proposition, that railroads, from the public nature of the business by them carried on and the interest which the

public has in their operation, are subject, as to their state business, to state regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned, in view of the long line of authorities sustaining that doctrine."

Atlantic Coast Line R. Co. vs. North Carolina Corp. Com., 206 U. S. 1, 51 L. ed. 933.

VII.

When a railroad company declines to switch for its connections, or for shippers, between points on its terminals, on equal terms, at reasonable rates, it unjustly discriminates.

It is a matter well within the knowledge of this Court that switching of cars, in order that they may be properly placed for loading or unloading, is absolutely demanded by modern commerce. A shipper receives a carload of freight at a depot of one railroad, pays the freight bill, and accepts the shipment. It passes into his possession. He may unload on the company public team track, or have the car switched to a more convenient point. If left in the cars of the original terminal carrier, demurrage accrues after a certain reasonable delay allowed for unloading. The carrier's responsibility as a carrier has terminated and it holds the freight as a warehouseman. The owner may desire to have the shipment

transferred to a warehouse located on another railroad, with the same city. If the connecting railroad refuses to switch the shipment within the city, within the prescribed switching limits, then his only alternative is to hire teams and haul the freight to its new destination. If he were forced to do this, the facilities which the carrier possesses, and has constructed upon property acquired by the exercise of the right of eminent domain, or by franchise, are not subjected to public use, and the carrier necessarily discriminates by switching for railroads of its choice, in the same city, and refusing to switch for others. The shipper is unable to use all of the railroad's facilities and is thereby inconvenienced and discriminated against by the carrier.

The reverse of this proposition is where a shipper desires to load a car at his place of business on one railroad to be shipped to a point on another railroad. If there is no through rate from the point of loading, the car must be switched to a shipping point before it can begin its journey, and the carrier, in order to perform properly its service to the shipper, must switch the car at a reasonable rate to the connecting line. The shipper pays merely a switching charge for the switching service, and the bill of lading is taken out after the car reaches the point on the connecting line from which it is to be shipped. When a carrier has issued and published tariffs con-

taining through rates with provisions for delivering at terminals, the switching service is included in the through rate. It is absorbed by the carrier performing the line haul. Such through traffic, moving at established rates, is not disturbed by the requirement that "no railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, whether such cars are loaded or empty, or whether such cars are to be loaded with freight to be shipped out of the state, or are loaded with freight shipped into the state."

In either case, the service is a commercial necessity. It cannot be successfully contended that the State can offer no remedy in a case where the carrier refuses to perform switching, or consents to do so only at an exorbitant rate, and for those of its own choosing. The fact that the car to be switched, after delivery and payment of freight charges, is loaded with freight shipped into the State, or is **to be loaded** with freight **to be shipped** out of the State, does not give to the shipment the character of interstate commerce.

In one case the shipment has reached its destination when it arrives at the depot to which it is consigned. The switching service is performed under a separate contract, and takes the place of a wagon or team haul which the shipper or consignee would per-

form if there were no tracks over which the car could be hauled. The freight passes into the possession of the consignee as soon as the freight charges are paid, and it is no concern of the carrier transporting it to its depot at destination what is done with it. The freight may be sold and delivered to anyone at New Orleans, or reshipped. If switched, the switching charge is in addition to the transportation charge. If reshipped to a point in the State outside of switching limits on a connecting line, another transportation charge is paid, in addition to the switching charge.

VIII.

The order of the Railroad Commission of Louisiana, being in aid of commerce, does not come into conflict with the Act to Regulate Commerce.

The order is in perfect harmony with the Act to Regulate Commerce; and, while it preceded the decision of the Interstate Commerce Commission in the case of Merchants & Manufacturers' Association of Baltimore vs. Pennsylvania R. R. Co., 23 I. C. C. 474, that decision emphasizes the wisdom and necessity of the State Railroad Commission's order.

Where the switching service is included in the through rate, the Interstate Commerce Commission controls the situation, for there the switching is done without any additional cost as part of the through service. The carriers, by tariff authority, absorb the switching charges.

But when the transportation is preceded or followed by a switching service, the charge for which is not included in the through rate, and which would not have been performed under the contract of carriage, then such switching is an etxra service, performed under a new contract, and has no relation to the movement of the shipment from station to station, in a "line haul." Delivery is complete when the shipment reaches the point to which it is consigned, and is there surrendered, on the payment of freight charges, to the owner.

There will ever be cases where the powers of state and nation run close together. When the powers of state and nation are exerted in harmony, and not in conflict, and the result of the exertion of the power vested in one is to aid in the ends for which the other exists, there can be no grounds for saying that one is an interference with the other. A regulation in aid of interstate and intrastate commerce is not an interference with interstate commerce.

As said before, the service over which Congress has exercised its power by placing it under control of the Interstate Commerce Commission's jurisdiction is that which is given by a common carrier and its connections in the transportation of freight on through rates, between points on the originating railroad and points on its connecting lines, or at terminal points. One rate covers the entire movement, including

switching, to industry tracks on connecting lines. In such cases through rates are provided, and, when so provided, arrangements have been previously made to deliver the freight at the designated point on the terminal. There the intracity or intrastate movement is contemplated as a part of the original shipment, at the time the shipment is made. It is not a separate and distinct transaction. It forms a continuous service under a contract of carriage from point of origin to point of destination. But there are cases within the regulating power of the State Commission where the intracity or intrastate movement begins and is ended after or before the interstate journey is completed. Such cases are those covered by the Commission's rule here in contest.

The Supreme Court of the United States recently, in the case of Hampton, et al., vs. the St. L., Iron Mountain & Sou. Railway Company, 227 U. S. 456, reviewed a decree of the United States Circuit Court for the Eastern District of Arkansas, enjoining the bringing of actions against an interstate railway carrier for the penalties incurred for a refusal to furnish cars for intrastate transportation as required by a state statute. The decree was reversed and the case remanded, with instructions to dismiss the bill. The statute under which the penalties were sought to be inflicted is set forth in the margin of the opinion and is in part as follows:

> "That when a shipper makes a written application to the station agent of a railroad company for a car or cars, to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of the freight, and its final destination, the railroad company shall furnish same at the place of shipment within six days from 7 o'clock a. m. the day following such application."
>
> * * * *
>
> "Interstate railroads shall furnish cars on application for interstate shipments, the same in all respects as other cars to be furnished by intrastate railroads under the provisions of this act."

The attack made upon the statute was based upon two propositions, the first being:

> "That the clause of the 7th section, set out above, manifests the intention that the act shall apply as well to interstate shipments as to intrastate shipments, and that this purpose invalidates the whole act, as there is nothing to justify the court in saying that the valid parts of the act would have been passed without the invalid parts."

It is only the first grounds urged that have a bearing on this case, and the same grounds are urged against the Louisiana Commission's rule here in contest. The decision of the Supreme Court is specially pertinent here, since the rules are in many respects similar in their requirements.

Discussing the first objection urged to the Arkansas statute, the Court says:

> "That clause probably means no more than that there shall be no discrimination against demands for cars for interstate shipments. If, however, it is construed as extending the act so as to regulate the furnishing of cars for interstate shipments, it would be invalid by reason of the provisions of the Hepburn amendment to the Act to Regulate Commerce of June 29, 1906 (34 Stat. at L. 584, Chap. 3591, U. S. Comp. Stat. Supp. 1911, p. 1288); Chicago, R. I. & B. R. Co. vs. Hardwick Farmers' Elevator Company, 226 U. S., ante, 174, 33 Sup. Ct. Rep. 174.
>
> The effect of this upon the remainder of the act has not been consideerd on the briefs of the appellee, further than to say that in Oliver vs. Chicago, R. I. & P. Co., 89 Ark. 466, 117 S. W. 238, decided pending this appeal, the Supreme Court of the State has held the act valid as including an elaborate and workable scheme for the regulation of intrastate railroad traffic, irrespective of the invalidity of the clause referred to. We shall therefore assume the remainder of the act to be valid, although the clause in question be regarded as invalid."

Should the Court determine that the order of the Railroad Commission of Louisiana is invalid, insofar as it requires that railroads in Louisiana shall not refuse or decline to switch cars for its connections, or for shippers or consignees, at reasonable rates,

> "whether such cars are to be loaded with freight to be shipped out of the state, or are loaded with freight shipped into the state,"

is invalid, the remainder of the order should be held practicable as a "workable scheme for the regulation of intrastate railroad traffic," irrespective of the clause referred to.

The order provides:

a. "No railroad company operating in the State of Louisiana shall decline or refuse to switch cars for any other railroad with which it connects, or any shipper, or consignee, at rates approved or established by the Commission,

b. whether such cars are loaded or empty,

c. or whether such cars are to be loaded with freight to be shipped out of the state or are loaded with freight shipped into the state.

d. All tariffs for the 'service' of switching cars in the State of Louisiana shall be filed with the Commission, within thirty days from the date of this order, and all the Commission's rules and orders, relative to rates and changes in rates, will apply to switching charges."

The last paragraph of the order requires that tariffs covering "the service of switching in the State of Louisiana" be filed with the Commission. The 7th agreed statement of fact (Td. 16) admits that copies of tariffs containing the charges for such switching service are on file with the Railroad Commission of Louisiana and with the Interstate Commerce Commission. So that, under the admission in

the 7th agreed statement of fact, the order has been complied with insofar as the filing of tariffs is concerned. The order requires the railroad to do what its tariff says it will do, without discrimination.

The 8th agreed statement of fact is:

> "That there are switch movements between points within the city of New Orleans, as set forth in admission No. 6 hereof, one or both of which may be located upon the terminals of the Illinois Central Railroad Company, upon which there is a switching charge varying according to distance, and in addition to which switching charge there is a charge of $3.00 per car for car rental; that these switch movements are entirely within the switching limits of the city of New Orleans and are made on orders of consignees under the circumstances stated in No. Sixth hereof; that said charges are shown on tariffs filed with and approved by the Interstate Commerce Commission, and with the Railroad Commission of Louisiana."

Just what the Interstate Commerce Commission has to do with such switch movements, we cannot apprehend. They are admittedly movements between points within the city of New Orleans, where there has been no previous transportation. They come plainly within the regulation power of the State Commission. It is admitted the circumstances under which such movements are made are the same as stated in the sixth admission, and the sixth admission (Tr. 16) states that the switch movement is always performed by first notifying the consignee that the

freight is ready for delivery at depot or warehouse of the company, and after the consignee calls and pays the freight bill and gives a switching order to the agent of the railroad company transporting the shipment to New Orleans, to have the car switched and placed on the terminal tracks, or on some of the industrial tracks connected with the terminal tracks, in the city of New Orleans, for delivery. Before he can secure the switching service he must

a. Be notified that the shipment is ready for delivery at the depot or warehouse of the company.

b. Pay the freight bill.

c. Give a switching order to the agent of the railroad company transporting the shipment to New Orleans, to have the car switched.

When the original carrier undertakes to transport freight to New Orleans, its obligation is fulfilled when the freight reaches its depot or freight yards, and the consignee, having taken possession of the goods in the car in which they are shipped makes another contract with another carrier to deliver the freight at another destination. The consignee may deliver the freight, on the switching order of the warehouse, or to someone else to whom it may be sold, after it reaches the depot of the original terminal company, and before the switch movement begins.

Plaintiff argues that Congress has placed its terminals exclusively under the jurisdiction of the Interstate Commerce Commission, and thus ousted the state's power to regulate the traffic which passes over such terminals, even though it admits that there are shipments made between points on such terminals that never enter into interstate commerce, and that there are switching movements made after the completion of the interstate shipment or before it begins.

This contention was urged in the Detroit Switching Case (231 U. S. 457), and the Court dismissed it, saying:

> "We will not dwell on the contention of appellants that Congress has taken over the whole subject of terminals, team tracks, switching tracks, sidings, etc. We need make no other comment than that it cannot be asserted as a matter of law that Congress has done so; and where the accommodation between intrastate and interstate commerce shall be made, we are not called upon to say on this record." (466.)

IX.

The Railroad Commission's order prevents unjust discrimination in the switching of cars.

Order No. 295 of the Railroad Commission seeks to require absolute fairness between shippers, consignees, and connecting carriers in the use of the facilities of commerce. It means no more than that

there shall be no discrimination between intrastate and interstate shippers in the furnishing and placing of cars. The Commission has not fixed any rates for the service of switching cars at terminals or junction points. The carrier is left to establish reasonable rates for such service, in the first instance. The order of the Commission can only cover those cases where the service performed is exclusive of an interstate rate, and either precedes the beginning of, or follows the termination of, an interstate shipment.

X.

Appellant has opened its terminals and switches cars between points in the city of New Orleans for some. It should not be allowed to deny similar service to all who apply.

Plaintiffs contend in their bill that the order of the Railroad Commission will compel it, against its will, and at a small switching charge, to allow other railroad companies the use of its yards, switches, and terminal facilities, and thus employ its properties to extend the terminals of other railroads in the city of New Orleans.

Our reply to this is that the plaintiff has opened and offered its terminals to public use by the publication and filing of tariffs both with the Interstate Commerce Commission and with the State Railroad Commission, and it therefore cannot contend that the

public has not the right to use these terminals without discrimination. This allegation in plaintiff's bill goes rather to the reasonableness of rates than to the use of its terminals without discrimination, and the reasonableness of rates is not at issue in this suit. We assert, as an elementary proposition, that the terminals and switches are a part of the railroad system and the public has the right to use them on equal and reasonable terms.

In the case of State ex rel. Cumberland Tel. & Tel. Co. vs. Texas & Pacific, 52 La. Ann. 1850, 28 South. 284, the Supreme Court of Louisiana had under review a case where the Cumberland Telephone Company was seeking by mandamus to compel the Texas & Pacific Railway Company to perform for it a service of distributing telephone poles at points between stations on its line. The service was being performed for the Western Union Telegraph Company, a rival of the Cumberland. Discrimination was alleged by the relator. A writ of mandamus, compelling the performance of the service for all, under similar conditions, was issued by the lower court, and the decree affirmed on appeal. In discussing the duties of common carriers, the Court said:

> "The rule applying has made it the specific duty of carriers to serve all alike. Favors and preferences are to be avoided. A common carrier cannot carry for one and refuse to carry for another. A railway is without right to

grant privileges where the public is concerned. 'If the company possessed this right, it might build up one set of men and destroy others, advance one kind of business and break down another, and make even religion or politics the test in the distribution of its favors,' (quoted form Sandford vs. Railroad Co., 24 Pa. St. 382, in Chicago & N. W. R. Co. vs. People, 8 Am. Rep. 690, in which the court maintained a writ of mandamus compelling the company to perform the service requested). "The business of the common carrier is for the public, and it is his duty to serve the public indifferently. He is entitled to a reasonable compensation; but, on payment of this, he is bound to carry for whomsoever will employ him to the extent of his ability." Messenger vs. Railroad Co., 18 Am. Rep. 756. The services to be rendered by a common carrier exclude the right to give special preference. Id., 37 N. J. Law, 531, citing New England Exp. Co. vs. Maine Cent. R. Co., 57 Me. 196.

This brings us to the objection urged by the defendant in support of the assignment of error arising from the asserted attempt to take away a valuable right of property vested in appellant without due process of law. It being the duty of the appellant not to discriminate in its service to the public, and to serve all impartially, a decree requiring service without discrimination is not the taking away of a valuable right of property, but is the enforcement of a duty. Under the laws as we take them, the appellant is expected to give good reasons for not serving one who offers to pay any reasonable amount required for the service. We have not found good reasons for

its refusing to serve relator. It is not proposed to interfere in any manner with the traffic or other business of the company. From this point of view there is no interference with the right of property. It is not an arbitrary exercise of the powers of government. It is due process of law."

In denying an application for rehearing the court announced:

"That it is the province of the court to say to this common carrier, 'What you do for others you cannot refuse to relator,' cannot, we think, be seriously questioned, and in so saying and enforcing by its writs the performance of the duty, it is not apparent that defendant company is denied any of the rights, privileges, and immunities granted to it by the several acts of Congress referred to in the application for rehearing and in the briefs filed on its behalf."

XI.

Cases Discussed.

THE DETROIT SWITCHING CASE.

A petition was filed with the Michigan Railroad Commission complaining that certain rates which had been filed by the Grand Trunk Railroad Company were unreasonable and exorbitant. After the filing of this complaint the Grand Trunk system by a supplement to the tariff complained of, suspended the intrastate rates named in its tariff and published another tariff cancelling all rates between industries

and private sidings on the system and hauled on team tracks on that system, and all rates between junction points with other carriers within the corporate limits of Detroit, and the team tracks of the system. The effect of this tariff was to withdraw all intrastate and interstate switching movements, except as to the Detroit & Toledo Shore Line, with which the Grand Trunk was under contract for team switching. The Michigan Commission suspended this tariff, whereupon the bill of the Grand Trunk Railway was filed.

It was contended that the order of the Michigan Railroad Commission was an interference with interstate commerce. The Court dismissed this contention, saying:

> "It is contended that the order is an interference with interstate commerce. The contention is premature, if not without foundation. Section 7, before its amendment, required all railroads subject to it to establish switching connections between one another and to establish depots and otherwise, for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of property and passengers to and from their several lines and those connecting therewith. And also for the transfer and delivery of cars without unreasonable delay or discrimination at any point on their own lines, or on any connecting line, and forbidding discrimination in rates and charges. And the respective companies were required to draw over their roads the merchandise and

cars of any other corporation or individual having tracks, when the cars are of proper gauge, equipment and properly loaded. Power was given to the Commission, if the compensation could not be agreed upon by the roads, to fix such compensation. In other words, the duty of investigation was imposed on the Commission and the duty to render such charge as was suitable to the situation, and to award compensation to the carriers for any service required of them.

We have seen from the statement of facts that the first concern of the Grand Trunk was the right to charge what it pleased or discriminate between the services. Inconvenience to its interstate business seems to be an afterthought. Besides, the fact of inconvenience is disputed. It is charged, it is true, in an affidavit filed by appellants; but there was a counter affidavit, and it was averred that the interchange of traffic required by the legislature of the state did not impede interstate business, but, on the contrary, facilitated it and intrastate commerce, and relieved, not caused, congestion on the tracks of the various railroads in the city. And, as we have seen, the order of the Commission was suspensory only of the tariff of the appellants, not a final determinal against it, or of the conditions which might or might not justify it. It is too late in the day to question the competency of a state to create a commission and to give it the power of regulating railroads, and necessarily of investigating the conditions upon which regulation may be directed. If a judicial interference is sought with the exercise of such power, it must be clearly shown to

> have been transcended, not left as a conclusion from the balancing of conflicting affidavits, or even, it may be, as held by the District Court, on ex parte affidavits. Courts are reluctant to interfere with the laws of a state or with the tribunals constituted to enforce them. Doubts will not be resolved against the law, nor the decision of its tribunals prevented or anticipated unless the necessity for either be demonstrated. Upon these principals the District Court acted, and rightly acted."
>
> Grand Trunk Ry. Co. vs. Michigan Railroad Commission, 231 U. S. 457.

THE WAVERLY CASE (I. C. C.).

Appellant relies upon the case of Waverly Oil Works Company vs. Pennsylvania Railroad Co., et al., 28 I. C. C. 621, in support of the proposition that it cannot be required to switch for its connections at a switching rate. The Interstate Commerce Commission, in this decision did not consider the question of interswitching at terminals. The opinion says:

> "What the Commission is really asked to do is to reduce the charge for switching carloads of freight to and from industries upon the lines of the Pennsylvania to other railroads entering Pittsburg. The purpose of the complainant is to so force down the switching charge that other lines will absorb these charges and thereby give to Pittsburg and to industries located there the **benefit of free** switching" (p. 623).

The Court will readily observe that there is no similarity between the question considered by the Interstate Commerce Commission in the Waverly Case and the order of the Railroad Commission of Louisiana. Indeed, Commissioner McChord, in a concurring opinion, says:

> "The broad question of interswitching at terminals was not presented, and I do not believe that the decision rightly can be given the interpretation which is accorded it by the majority opinion. My opinion in this regard seems fortified by the decision of the Supreme Court in Grand Trunk Railway Company of Canada vs. Michigan Railroad Commission, 23 U. S. 452, to which my attention has just been called and which was delivered December 8, 1913" (28 I. C. C. 632).

There have been but few cases involving switching service before the courts.

In Dixon vs. Central of Ga., 110 Ga. 173, 35 S. E. 369, the distinction between transportation and switching is thus stated:

> "The test of distinction between transportation service relatively to loaded freight cars, for which a railway company can lawfully charge tonnage rates, and switching or transfer service, for which it is restricted to a fixed charge per car, is not whether the movement of the cars involves the use of a portion of the company's main line, or that of another; for there may be a transportation service over one or more spur tracks of the same company, if the contract of affreightment requires move-

ments over other tracks or lines of railway; whereas, **a switching or transfer service is one which precedes or follows a transportation service and applies only to a shipment on which the legal freight charges have already been earned or are to be earned.**"

McNEIL VS. SOUTHERN.

It is contended in the plaintiff's brief by its able counsel that the case of McNeil vs. Southern Railway Company, 202 U. S. 543, 50 L. ed. 1142, is decisive of the point that the order in contest is a regulation of interstate commerce and not within the control of the Louisiana Commission.

The North Carolina Commission was attempting to require the Southern Railway Company to deliver cars beyond its right-of-way to a private siding without additional compensation. In the case now before the court the Louisiana Commission is only attempting to require that switching shall be done without discrimination by railroad companies whose terminal facilities are open to the public by the filing of tariffs, on the payment of established tariff rates. In the North Carolina case just cited the Court refused to question "the right of the state of North Carolina, in the exercise of its police authority, to confer upon an administrative agency the power to make many reasonable regulations concerning the place, manner and time of delivery of merchandise moving in the channels of interstate commerce." (202 U. S. 543 (561).

It was held, however, that "any regulation of such subject made by the state, or under its authority, which directly burdens interstate commerce is a regulation of such comemrce and repugnant to the Constitution of the United States." We repeat, the order of the Louisiana Railroad Commission does not directly burden, but is in aid of interstate commerce.

The Court merely held that in the particular case before it the order by which the carrier was required to deliver cars containing interstate shipments beyond its right-of-way to a private siding was an unlawful interference with interstate commerce.

There is no such requirement in the order of the Louisiana Commission. There was no prior delivery of the freight in the North Carolina case. A notice was given to the consignee that the shipments were at the depot awaiting delivery. The consignee declined to receive and unload the cars at that point. The North Carolina Commission then issued an order requiring the company, upon the payment of the freight charges by the consignee, to make delivery of the cars beyond its right-of-way and on a private industrial track, as referred to, without additional compensation. Interstate transportation had not been completed in the North Carolina case, whereas delivery must have been made before the order of the Louisiana Commission begins to operate, on cars

reaching New Orleans over one of the railroads connecting with the Illinois Central. The local switching service constitutes no part of the through service and is performed for additional charge under a new contract. In the North Carolina case there was no additional contract and no additional charge contemplated. The cases are widely dissimilar.

LARABEE FLOUR MILLS CASE.

The Supreme Court of the United States, in the case of Missouri Pacific Railway Company vs. Larabee Flour Mills Company, 211 U. S. 612, 53 L. ed. 352, 29 Sup. Ct. Rep. 214, held that a common carrier is bound to treat all shippers alike and can be compelled to do so by mandamus or other proper writ, irrespective of legislative action or special mandate from any commission or other administrative board. In the Larabee case the duty which was enforced in the state court by mandamus was the duty of a railroad company engaged in interstate commerce to afford equal local switching to its shippers, notwithstanding the cars concerning which the service was claimed were eventually to be engaged in interstate commerce. In this case the Missouri Pacific had engaged in the business of transporting cars from the Santa Fe track to industries located at Stafford, and continued to do so for all parties except the mill company. Mr. Justice Brewer, delivering the opinion of the Court, says:

> "So long as it engaged in such transfer it was bound to treat all industries at Stafford alike, and cannot refuse to do for one that which it was doing for others. No legislative enactment, no special mandate from any commission or other administrative body, was necessary, for the duty arose from the fact that it was a common carrier. This lies at the foundation of the law of common carriers. Wherever one engages in that business the obligation of equal service to all arises; and that obligation, irrespective of legislative action or special mandate, can be enforced by the courts."

In the statement of facts, prepared by Mr. Justice Brewer, it is said (p. 614):

> "The mill company has, for more than four years, been operating a flour mill of 1,000 barrels daily capacity. About three-fifths of its product is shipped out of the state of Kansas into other states, and the remaining two-fifths to points within the state. It receives a large portion of its grain in carload lots over the two roads." (Santa Fe & Mo. P. Ry.)

The contention of the carriers in the Larabee case was that they were common carriers engaged in interstate commerce, and as such were subject to the control of Congress and, therefore, in these respects not amenable to the power of the state.

The Larabee case is differentiated by the Court from the case of McNeill vs. Southern Railway Company, 202 U. S. 543, and squarely meets the argu-

ment presented on behalf of the appellant in the following language:

> "On the other hand, it is said that Congress has already acted—has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has intrusted power to that Commission does not, in the absence of action by it, change the rule which existed prior to the creation of the Commission. Congress could always regulate interstate commerce, and could make specific provisions in reference thereto, and yet this has not been held to interfere with the power of the state in these incidental matters. A mere delegation by Congress to the Commission of a like power has no greater effect, and does not of itself disturb the authority of the state. It is not contended that the Commission has taken any action in respect to the particular matters involved. It may never do so, and no one can, in advance, anticipate what it will do when it acts. Until then the authority of the state in merely incidental matters remains undisturbed. In other words, the mere grant by Congress to the Commission of certain national powers in respect to interstate commerce does not of itself, and in the absence of action by the Commission, interfere with the authority of the state to make those regulations conducive to the welfare and convenience of its citizens. Running through the entire argument of counsel for the Missouri Pacific is the thought that the control of Congress over interstate commerce and a delegation of that control to a commission, necessarily withdraws from the state all power in respect to regula-

tions of a local character. This proposition cannot be sustained. Until specific action by Congress or the Commission, the control of the state over these incidental matters remains undisturbed. But it is further contended that this is not a mere incidental matter, indirectly affecting the interstate commerce, but directly a part of such commerce, and therefore beyond the power of the state to control; and, in support of that, McNeil vs. Southern R. Co., 202 U. S. 543, 57 L. ed. 1142, 26 Sup. Ct. Rep. 722, is referred to. There are many points of resemblance between that case and this, but there is this substantial distinction: In that was presented and determined solely the power of a state commission to make orders respecting the delivery of cars engaged in interstate commerce beyond the right-of-way of the carrier and to a private siding—an order which affected the movement of the cars prior to the completion of the transportation; while here is presented, as heretofore indicated, the question of the power of the state to prevent discrimination between shippers, and the common law duty resting upon a carrier was enforced. This common law duty the state, in a case like the present, may—at least, in the absence of congressional action—compel a carrier to discharge."

NEW YORK, EX REL, PENNSYLVANIA R. CO. VS. KNIGHT.

In the case of New York, ex rel, Pennsylvania R. Co. vs. Knight, 192 U. S. 27, 48 L. ed. 327, the Court held that a franchise tax imposed under appropriate statutes of the state of New York upon

the Pennsylvania Railroad Company for carrying on a cab service wholly within the state, for the purpose of conveying its passengers to and from its ferry landing in New York city, the charges for which are entirely separate from those for other transportation, is not an unconstitutional burden on interstate commerce, but is a tax upon an independent local service preliminary or subsequent to any interstate transportation.

In the opinion, delivered by Mr. Justice Brewer, the following language is used:

> "Whenever a separation in fact exists between transportation service wholly within the state and that between the states, a like separation may be recognized between the control of the state and that of the nation. Osborne vs. Florida, 164 U. S. 650, 41 L. ed. 586, 17 Sup. Ct. Rep. 214; Pullman Co. vs. Adams, 189 U. S. 420, 47 L. ed. 877, 23 Sup. Ct. Rep. 494.
>
> As we have seen, the cab service is rendered wholly within the state, and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent to, and not necessarily connected therewith. But when service is wholly within a state, it is presumably subject to state control. The burden is on him who asserts that, though actually within, it is legally outside, the state; and unless the interstate character is established, locality determines the question of jurisdiction."

The situation relative to the switching service affected by the order of the Louisiana Commission could not well be more precisely stated.

BROWN VS. HOUSTON.

In the case of Brown vs. Houston, 114 U. S. 622, 29 L. ed. 257, 5 Sup. Ct. Rep. 1091, the property (coal in barges) had reached the state, but was yet in the boats in which it had been brought into the state. While on the barges it was offered for sale. It was held that it had become part of the property of the state and was subject to taxation.

In Pittsburg & Sou. Coal Company vs. Bates, 156 U. S. 577, 39 L. ed. 538, 5 Int. St. Com. Rep. 30, 15 Sup. Ct. Rep. 415, the facts were similar to those in the case of Brown vs. Houston, and it was affirmed on the authority of that case. In both of these cases the question involved was the validity of a local tax on coal in barges shipped from the mines in Pennsylvania to New Orleans, Louisiana. The coal in the Brown vs. Houston case had reached its destination but had not been unloaded from the barges. In the case of Pittsburg, etc., vs. Bates it had not reached its exact destination, but was moored in the Mississippi River at a convenient mooring place about nine miles above the port of Baton Rouge.

COE VS. ERROL.

In the celebrated case of Coe vs. Errol, 116 U. S. 517, 29 L. ed. 715, the Supreme Court of the United States held that exportation is not begun until the goods are committed to a common carrier for transportation out of the state to the state of their destination, or until they have started on their **ultimate passage** to that state.

The Court says:

> "What we have already said, however, in relation to the products of a state intended for transportation to another state will indicate the view which seems to us the sound one on that subject—namely, that such goods do not cease to be part of the general mass of property in the state, subject, as such, to its jurisdiction and to taxation in the usual way, until they have been shipped or entered with a common carrier for transportation to another state or have been started upon such transportation in a continuous route or journey. We think that this must be the true rule on the subject. * * * * It is true it was said in the case of the Daniel Ball, 10 Wall. 565 (77 U. S. bk. 19, L. ed. 1002): 'Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced.' But this movement does not begin until the articles have been shipped or started for transportation from the one state to the other. The carrying of them in carts or other vehicles or even floating them to the depot where the journey is to commence is no part of that journey

> That is all preliminary work performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another state, or committed to a common carrier for transportation to such state, its destination is not fixed and cerain. It may be sold or otherwise disposed of within the state, and never put in course of transportation out of the state. Carrying it from the farm or the forest to the depot is only an interior movement of the property, entirely within the state, for the purpose, it is true, but only for the purpose, of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the state, its exportation is a matter altogether in fieri, and not at all a fixed and certain thing."

THE DIAMOND MATCH CASE.

In Diamond Match Co. vs. Ontonagon, 188 U. S. 82, 47 L. ed. 394, Coe vs. Errol, supra., is cited and its doctrine supported, in the following terms:

> "In further specialization of these propositions we may say that the cases establish that there may be an interior movement of property which does not constitute interstate commerce, though property come from or be destined to another state. In the one case, though it have not reached its place of disembarkation or delivery, it may be taxed. 114 U. S. 662, 29 L. ed. 257, 5 Sup. Ct. Rep. 1091. In the other case, until it be shipped or started on its final journey, it may be taxed. 116 U. S. 517, 29 L. ed. 715, 6 Sup. Ct. Rep. 475."

The service which is covered by the through rate applicable to a car moving in interstate commerce to New Orleans, Louisiana, does not include delivery to a point on the terminals of the IllinoisCentral Railroad. Such service is completed when the car reaches the depot or holding tracks of the railroad company by which it is transported. Cars which are loaded with freight shipped into the state are held on the holding tracks of the railroads entering New Orleans until the shipper calls and pays the freight and instructs that they be delivered by the original terminal carrier to a connecting carrier for further transportation to the point where they are to be unloaded. Such freight may be sold in the cars and re-shipped or switched to the purchaser's station or warehouse.

THE TEXARKANA CASE.

In the case of Gulf, Colorado & Santa Fe Railway Company vs. Texas, 204 U. S. 403, 51 L. ed. 540, the Supreme Court established the doctrine that:

> "Whatever obligation may rest upon the carrier at the terminus of its transportation to deliver to some further carrier in obedience to the instructions of the owner, it is not acting as a carrier but simply as a forwarder."

This case applies to the conditions under which switching is performed by appellants at New Orleans.

The sixth stipulation of the agreed statement of facts in the case before the Court provides:

> "That when the cars loaded with interstate and intrastate freight arrive at New Orleans, the consignee is first notified that the freight is ready for delivery at depot or warehouse of the company; that after consignee calls and pays the freight bill, he gives a switching order to the agent of the railroad company transporting the shipment to New Orleans to have the car switched and placed on the terminal tracks, or on some industrial track connecting with the terminal tracks, in the city of New Orleans, for delivery; that this order is then submitted through proper agency to the employees of the Illinois Central Railroad Company, and the Illinois Central Railroad Company executes the switching order."

Manifestly, all of such cars must arrive in New Orleans on some other line than the Illinois Central, because, if the shipment is made via the Illinois Central Railroad, the service of switching the car from the holding track or depot to an industrial or terminal track on the Illinois Central Railroad is included in the through rate. Before the switching order is given by the owner of the freight the freight charges must be paid. A new arrangement is then made for the transportation of the cars from the depot or holding track of the original terminal carrier to a private industrial track connecting with the terminal rails of the Illinois Central Railroad.

Under this new contract the switching service is performed. Unless this new contract is made with the connecting carrier for the switching of the car from the depot of the original terminal carrier to another point within the city of New Orleans, there will be no further service performed by any carrier. The shipper would then be compelled to unload the shipment at the place of delivery designated by the original terminal carrier. As was said by the Court in the Gulf, Colorado & Santa Fe case,

> "The one contract of the railroad companies having been finished, he must make a new contract for his carriage to Goldthwaite and that would be subject to the law of the state to which that carriage was to be made."

There is no continuity of movement of cars from the point of shipment to a point located beyond the terminals of the original carriers in the city of New Orleans. The consignee takes possession, paying the freight to the initial carrier and assumes full control.

The seventh stipulation in the agreed statement of facts provides:

> "That the Illinois Central Railroad Company, in connection with the various railroads entering the city of New Orleans, has issued, published and now has in effect, various terminal tariffs covering terminal switching in the city of New Orleans, which tariffs do not include any rates for transporting the freight to or from the city of New Orleans, but simply cover the charges made for switching cars

> from the depot or yard of one railroad company to points on its terminals. Copies of all such tariffs are on file and approved by the Interstate Commerce Commission and with the Railroad Commission of Louisiana. It is understood that said tariffs can be referred to by either party at any time during the progress of this case or present any views in connection therewith."

This stipulation covers the service which the Railroad Commission of Louisiana, by its Order No. 295, seeks to control, in addition to the switch movements between points within the city of New Orleans where the cars are loaded at one industry and switched to another industry within the limits of New Orleans by the payment of a charge of $3.00 per car for car rental in addition to the switching charge.

If the tariffs of the Illinois Central Railroad Company do not include rates for "transporting the freight to or from the city of New Orleans but simply cover the charges made for switching cars from the depot or yard of one railroad company to points on its terminals," how, then, can it be said that the switching performed under such tariffs is interstate commerce and how can the complainants successfully urge, having made this admission, that the Railroad Commission of Louisiana may not order that such switching as is performed under such tariffs, be free from discrimination?

CHICAGO, MILWAUKEE & ST. PAUL VS. IOWA.

In the case of Chicago, Milwaukee & St. Paul Railway Company vs. Iowa, 233 U. S. 334, 58 L. ed. 988, the Court makes clear its position upon this question. The Chicago, Milwaukee & St. Paul Railway Company, in 1909, had refused to accept shipments of coal in carload lots at Davenport, Iowa, for points in that state when tendered in cars of other railroad companies by which the coal had been brought to Davenport from points in Illinois. The railway company insisted that it was entitled to furnish its own cars. Upon complaint, the Railroad Commission of Iowa issued an order requiring that.

> "Upon the arrival of loaded cars of coal at the city of Davenport, upon any line of railroad, when said cars are placed upon the interchange track at Davenport, as ordered or requested by the owner or consignee of said cars, and the freight paid thereon, and the ordinary billing in use by the respondent railway is tendered to it for a billing of said cars so placed, to a point on its own line within the State of Iowa, that the respondent railway company be, and is hereby, ordered and required to accept said billing, receive said cars so billed, and transport them on its own line to the point designated by the owner or consignee in said billing; and that it receive said car or cars in whatever equipment the same may be loaded, without requiring an unloading and reloading into its own equipment and

> transport said car or cars over its own line to points within this state, so noted, without unloading and reloading as above set forth, in the same manner that it receives cars from connecting lines, loaded in its own equipment. It is expressly understood, however, in this order, that no questions in relation to switching charges are determined."

The Supreme Court of the State of Iowa held the order to be a valid exercise of power by the Railroad Commission of Iowa. The Supreme Court of the United States, in reviewing the case, affirmed the judgment of the lower court. From the opinion rendered by Mr. Justice Hughes, we excerpt the following language, which is strongly applicable to the case now before the Court:

> "The Railroad Commission held that the transportation desired from Davenport was a purely intrastate service, saying, 'Under the admitted facts, the city of Davenport became a distributing point for coal shipped by the consignor. The certainty in regard to the shipments of coal ended at Davenport. The point where the same was to be shipped beyond Davenport, if at all, was determined after the arrival of the coal at Davenport. The coal was under the control of the consignee, and he could sell it in transit or at Davenport, or reconsign it to a point on respondents' railway, or any other railway, at its own discretion.' Upon the trial of the present suit in the state court, the state introduced in evidence the proceedings, decision and order of the Commission, and without further evidence

both parties rested. The Supreme Court of the State took the same view of the facts that the Commission had taken and accordingly held that the shipments were intrastate. The Court said that the facts showed that the coal was originally consigned to the coal company in Davenport, that it was there held until sales were made, that the consignee had taken delivery, paying the freight to the initial carrier, and assumed full control. 152 Iowa 317, 319; 130 N. W. 802. The record discloses no ground for assailing this finding. It is undoubtedly true that the question whether commerce is interstate or intrastate must be determined by the essential character of the commerce, and not by mere billing or forms of contract. Railroad Commission vs. Worthington, 255 U. S. 101, 56 L. ed. 1004, 32 Sup. Ct. Rep. 653; Texas & N. O. R. Co. vs. Sabine Tram Co., 227 U. S. 111, 57 L. ed. 442, 33 Sup. Ct. Rep. 229; Railroad Commission vs. Texas & Pacific R. Co., 229 U. S. 336, 57 L. ed. 1215, 33 Sup. Ct. Rep. 837. But the fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received, to other points of destination, does not necessarily establish a continuity of movement, or prevent the reshipment to a point within the same state from having an independent and intrastate character. Gulf, C. & S. F. R. Co. vs. Texas, 204 U. S. 403, 51 L. ed. 540, 27 Sup. Ct. Rep. 360; Railroad Commission vs. Worthington, 225 U. S. 101, 109, 56 L. ed. 1004, 1008, 32 Sup. Ct. Rep. 653; Texas & N. O. R. Co. vs. Sabine Tram Co., 227 U. S. 111, 129, 130, 57 L. ed. 442, 449, 450, 33 Sup. Ct. Rep. 229. The question is with respect to the nature of the actual movement in the particular case;

> and we are unable to say upon this record that the state court has improperly characterized the traffic in question here. In the light of its decision, the order of the Commission must be taken as referring solely to intrastate transportation originating at Davenport."

Finally it is said that the order of the Commission interferes with interstate commerce because the cars in question were the vehicles of that commerce and were brought into the state as such. No question, however, is presented here as between the shippers and the owners of the cars, and no actual interference with interstate commerce is shown. Nor does it appear that any regulation under Federal authority has been violated.

MINNESOTA RATE CASE.

In the Minnesota Rate Case (Simpson vs. Shepherd, 230 U. S. 352) the general principles of state regulatory authority are fully discussed, and no doubt remains as to the view of the Court upon the great questions involved. The Court in that case says:

> "The legislation of states, safeguarding life and property and promoting comfort and convenience within its jurisdiction, may extend incidentally to the operations of the carrier in the conduct of interstate business, provided it does not subject that business to unreasonable demands and is not opposed to federal legislation."

And in discussing the reserved power of the states says:

> "Further, it is competent for a state to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals and welfare of its people, although intrastate commerce may, incidentally and indirectly, be involved."
>
> "The broadest meaning is given to the words 'govern' and 'regulate.'"

The contentions of the appellant are that the order of the Railroad Commission of Louisiana requires it to perform intracity switching against its will, and to use properties valued at many thousands of dollars which it has provided for its own use exclusively, in doing so, that it can refuse to accept cars at junction points within the city of New Orleans to be switched to team tracks or industrial tracks on its terminal lines; that it cannot be compelled by state authority to switch cars which reach New Orleans over other railroads, loaded with freight shipped to New Orleans from points outside the State of Louisiana; that it cannot be compelled to switch cars from a point on its New Orleans terminals to a connecting line at New Orleans; that it cannot be compelled to switch cars from one connecting line to another, in the city of New Orleans; and, finally, that it cannot be required by state authority to switch

cars from one point in New Orleans to another, although such cars are loaded and unloaded in the prescribed switching limits of the city, on a connecting line.

The case, therefore, presents the question of the power of a railroad company to refuse to turn its cars over to another railroad for movement beyond the junction point, when the junction point is within the city in which the cars are loaded, and of its power to refuse to accept cars at a junction point in any city and deliver them to team tracks or industry tracks on its lines, and finally of its power to refuse to switch cars that are moving from point to point in the city via junctions with other carriers.

If the contentions of appellants are sustained, it will enable railroads operating in the State of Louisiana to refuse to transport cars to points on their terminals, or between points on their terminals, and thereby close their terminals to public use except upon such terms as they may dictate.

If the order of the Railroad Commission is sustained, it will aid in the movement of traffic, promote the prompt and efficient movement of cars both for loading and unloading, permit the shipper to freely exercise his right to designate the route over which his shipments shall move, stimulate competition between carriers, encourage and permit the proper

use of railroad facilities and prevent unjust discrimination in the use of instruments of commerce.

CONCLUSION.

Since there is no attempt to fix the rates for the switching service required by the Commission's order, the only question is whether the state has the power, through its Railroad Commission, to require that what the carrier does for one it must do for all upon equal terms.

The authorities so abundantly support the affirmance of this proposition that argument is unnecessary. The question for the Court is whether the Commission acted within its powers. The enforcement of the order will compel the appellants to perform the so-called intracity delivery or switching service at such rates as the carriers may initiate. It is admitted that there are tariffs already on file providing rates for such service. The laws of Louisiana amply provide against an invasion of the Constitutional rights of the carrier. Only rates which are just and reasonable can be prescribed, and the actions of the Louisiana Railroad Commission are subject to review by the courts.

The switching service required by the order is a function of a common carrier. When performed without discrimination, it is a useful facility of commerce and does not impede it—a service which, while inde-

pendent of the original contract of carriage, is essentially a transportation service.

It guarantees an uninterrupted flow of commerce, and prevents the carriers from making effective combinations which would nullify the shipper's right to say over what routes his shipments shall be made. Any regulation which has for its purpose the securing of the expeditious movement of cars is in aid of commerce, and the ownership of the car, or the route over which it moves to its original termination, cannot be made the test of whether a connecting carrier will receive and transport such car to another destination, both being within the same city.

Reasonable compensation for the service may always be demanded, but when the compensation is reasonable the carrier should not be permitted to close its terminals except to those whom it may select.

The order of the Railroad Commission of Louisiana, being within its powers, and not in conflict with any federal regulation, should be upheld as a valid regulation of the instruments of commerce belonging to interstate railroads operating in the State of Louisiana.

Respectfully submitted,

RUFFIN G. PLEASANT,
Attorney General of Louisiana.

WYLIE M. BARROW,
Assistant Attorney General,
Attorney for Appellees.

"APPENDIX."

Agreement between counsel to supply documents not printed in the transcript.

"SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1914,

No. 423.

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

vs.

C. L. de FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the RAILROAD COMMISSION OF LOUISIANA,
Appellees.

It is hereby stipulated and agreed by and between the undersigned counsel for the Appellant and Appellees, respectively, that:

Since the printed transcript of the record in this case does not contain the order granting an interlocutory injunction signed by United States Circuit Judge, Charles Parlange, the 25th day of February, A. D. 1904, at New Orleans, Louisiana, and the certified copy of Order No. 295 of the Railroad Commission of Louisiana, attached to the original answer of the defendants as a part thereof and

marked "Exhibit A," therefore, copies of these documents are supplied herewith and may be used by either plaintiffs or defendants in their briefs and arguments before the Court and considered by the Court.

GUSTAV LEMLE,
Attorney for Appellant.

(Signed)

WYLIE M. BARROW,
Assistant Attorney General,
Attorney for Appellees.

Interlocutory Injunction.

UNITED STATES CIRCUIT COURT,
EASTERN DISTRICT OF LOUISIANA,
No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY

vs.

C. L. deFUENTES, W. L. FOSTER and OVERTON CADE, Commissioners and Members of the RAILROAD COMMISSION OF LOUISIANA.

In the Matter of the Rule Taken by Complainant on Defendants for an Injunction Pendente Lite.

This cause came on to be heard on the Twentieth day of February, 1904, Present: Gustave Lemle, Esq. Counsel for Complainant, and

Hon. Walter Guion, Attorney General of the State of Louisiana, Counsel for Defendants.

And the Court after hearing Counsel for both Complainant and Defendants, and after considering the sworn allegations of the Bill of Complaint, and being of the opinion that Complainant is entitled to an injunction pendente lite as prayed for:

IT IS ORDERED, ADJUDGED AND DECREED that a writ of injunction be issued out of and under the seal of this Court, addressed to C. L. DeFuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, and each of them, restraining them, and each of them, from in any manner enforcing or attempting to enforce the Rule No. 295 of said Railroad Commission of Louisiana heretofore entered on the 7th day of August, 1903, against Complainant; this injunction to continue in force during the pendency of this suit, or until further orders of this Court.

Dated at New Orleans, in the Eastern District of Louisiana, this 25th day of February, A. D. 1904.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Exhibit "A" to the Answer, Not Included in Transcript of Record.

RAILROAD COMMISSION OF LOUISISANA
BATON ROUGE,

ORDER NO. 295

At a general session of the Railroad Commission of Louisiana, held at its office in Baton Rouge, Friday, August 7th, 1903, the following general rule was adopted:

APPLICATION OF CAR SERVICE RULES.

No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are loaded or empty, or whether such cars are to be loaded with freight to be shipped out of the State, or are loaded with freight shipped into the State.

All tariffs for the "service" of switching cars in the State of Louisiana shall be filed with the Commission within thirty days from the date of this

order, and all the Commission's rules and orders relative to rates, and changes in rates, will also apply to switching charges.

BY ORDER OF THE COMMISSION.

Baton Rouge, Louisiana,
August 8, 1903.

C. L. DE FUENTES, Chairman.

Commissioners: W. L. FOSTER.

OVERTON CADE.

Attest:

A true copy:

(SEAL)

(Sig) W. M. Barrow,
Secretary.

ILLINOIS CENTRAL RAILROAD COMPANY *v.* FUENTES ET AL., CONSTITUTING THE RAILROAD COMMISSION OF LOUISIANA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 423. Argued January 8, 1915.—Decided February 1, 1915.

The switching of empty cars to and from a connection with an interstate railroad to a side track within the terminal of another railroad, for the purpose of being there loaded with goods intended for interstate commerce, constitutes a part of interstate commerce, the regulation of which Congress has undertaken, and any order of a state commission regulating such switching transcends the limits of its power.

When freight actually starts in the course of transportation from one State to another it becomes a part of interstate commerce; and it is the essential nature of the movement and not the form of the bill of lading that determines the character of the commerce involved.

Order 295 of the Louisiana Railroad Commission, relative to switching of cars between connecting carriers and requiring carriers to conform to rates established by the Commission as to cars shipped in or out of the State, *held* unconstitutional as a burden upon, and an attempt to regulate, interstate commerce.

THE facts, which involve the constitutionality under the Commerce Clause of the Federal Constitution of orders made by the State Railroad Commission of Louisiana relative to switching of cars as applied to cars used in interstate commerce, are stated in the opinion.

Mr. Blewett Lee, with whom *Mr. Robert V. Fletcher*, *Mr. Hunter C. Leake* and *Mr. Gustave Lemle* were on the brief, for appellant:

The District Court had jurisdiction.

A switching movement, whereby interstate freight is delivered or an interstate movement is originated, is itself a movement in interstate commerce.

The order, since it deals with interstate commerce, is invalid as encroaching upon the exclusive authority of Congress.

This order cannot be construed as applying only to intrastate commerce, and thereby saved from invalidity.

The order if affecting interstate commerce is invalid not only on Federal grounds but because it violates the Constitution of Louisiana.

The decision of the court below was based on *Grand Trunk Ry.* v. *Michigan R. R. Commission*, 231 U. S. 457.

The effect of the order of the Commission is to deprive the appellant of its property without due process of law.

In support of these contentions, see *Tex. & Pac. Ry.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Adams* v. *Vicksburg Ry.*, 29 I. C. C. 52; *Allen* v. *Pullman Co.*, 191 U. S. 171; *Chicago, R. I. & P. Ry.* v. *Hardwick Elevator Co.*, 226 U. S. 426; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Employers' Liability Cases*, 207 U. S. 463; *Goodman* v. *Heilig*, 157 N. Car. 6; *Gulf, C. & S. F. R. R.* v. *Texas*, 204 U. S. 403; *Gulf, C. & S. F. R. R.* v. *Texas*, 72 Texas, 404; *Hampton* v. *St. L., I. M. & S. R.*, 227 U. S. 456; *Ill. Cent. R. R.* v. *McKendree*, 203 U. S. 514; *Leloup* v. *Mobile*, 127 U. S. 640; *Louis. & Nash. R. R.* v. *Central Stock Yards*, 212 U. S. 132; *McNeill* v. *Southern Ry.*, 202 U. S. 545; *Mich. Cent. R. R.* v. *Powers*, 201 U. S. 245; *Minnesota Rate Cases*, 230 U. S. 352; *Ohio R. R. Comm.* v. *Worthington*, 225 U. S. 101; *Oliver* v. *Chi., R. I. & P. R. R.*, 89 Arkansas, 466; *Peoples &c. Co.* v. *Grand Trunk R. R.*, 27 I. C. C. 24; *R. R. Comm.* v. *Tex. & Pac. R. R.*, 229 U. S. 336; *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362; *Rhodes* v. *Iowa*, 170 U. S. 412; *Smyth* v. *Ames*, 169 U. S. 466; *Southern Pacific T. Co.* v. *Int. Com. Comm.*,

219 U. S. 498; *State* v. *Mo. Pac. Ry.*, 212 Missouri, 658; *In re Detroit Switching Charges*, 28 I. C. C. 494; *Texas & N. O. R. R.* v. *Sabine Tram Co.*, 227 U. S. 111; *Trade Mark Cases*, 100 U. S. 82; *United States* v. *Ju Toy*, 198 U. S. 253; *United States* v. *Reese*, 92 U. S. 214; *United States* v. *Union Stock Yards*, 226 U. S. 286; *Waverly Oil Works* v. *Penna. R. R.*, 28 I. C. C. 621; *Worden* v. *Cole*, 74 Kansas, 226; *Ex parte Young*, 209 U. S. 123.

Mr. Wylie M. Barrow, with whom *Mr. Ruffin G. Pleasant*, Attorney General of the State of Louisiana, was on the brief, for appellees:

The Railroad Commission of Louisiana has power and authority to adopt Order No. 295. The laws of the State require railroads operating in Louisiana to perform the service.

The order was directed against all railroads operating in the State.

The order does not deprive appellant of its liberty to contract, nor of its property without due process of law, nor does it deny it the equal protection of the laws, in violation of the Fourteenth Amendment.

There is no encroachment upon the Federal exercise of power by the order of the Commission, which prescribes a reasonable regulation in aid of commerce and which prevents unjust discrimination in intracity switching.

The order of the Commission does not require the railroad company to give the use of its terminals to its connections.

The regulating power of the Commission extends over the carrier and all of its appurtenances.

When a railroad company declines a switch for its connections, or for shippers, between points on its terminals, on equal terms, at reasonable rates, it unjustly discriminates.

The order of the Commission, being in aid of com-

merce, does not conflict with the Act to Regulate Commerce.

The Commission's order prevents unjust discrimination in the switching of cars.

Appellant has opened its terminals and switches cars between points in the city of New Orleans for some; it should not be allowed to deny similar service to all who apply.

In support of these contentions, see Act to Regulate Commerce, § 3; *Atchison, T. & S. F. R.* v. *Denver R. R.*, 110 U. S. 701; *Atlantic Coast Line* v. *North Carolina Corp. Com.*, 206 U. S. 1; *Brown* v. *Houston*, 114 U. S. 622; *Chicago, M. & St. P. Ry.* v. *Iowa*, 233 U. S. 334; *Coe* v. *Errol*, 116 U. S. 517; Constitution of the State of Louisiana, Arts. 263–286; *Grand Trunk Ry.* v. *Michigan*, 231 U. S. 457; *Diamond Match Co.* v. *Ontonagon*, 188 U. S. 82; *Dixon* v. *Central of Ga.*, 110 Georgia, 173; 35 S. E. Rep. 369; *Gulf & Santa Fe Ry.* v. *Texas*, 204 U. S. 403; *Hampton* v. *St. L., I. M. & S. Ry.*, 227 U. S. 456; *Louis. & Nash. R. R.* v. *Higdon*, 234 U. S. 592; *Louis. & Nash. R. R.* v. *Kentucky*, 161 U. S. 677; *McNeil* v. *Southern Ry.*, 202 U. S. 543; *Merchants' Assn.* v. *Penna. R. R.*, 23 I. C. C. 474; *Minnesota Rate Cases*, 230 U. S. 352; *M. L. &c. S. S. Co.* v. *R. R. Comm. of La.*, 109 Louisiana, 247; *Same* v. *Same*, 127 Louisiana, 636; *Mo. Pac. Ry.* v. *Larabee Mills*, 211 U. S. 612; *Mobile County* v. *Kimball*, 102 U. S. 586; *Penna. R. R.* v. *Knight*, 192 U. S. 27; *Pittsburg Coal Co.* v. *Bates*, 156 U. S. 577; *R. R. Comm. of La.* v. *Cumberland Tel. Co.*, 212 U. S. 414; *R. R. Comm. of La.* v. *K. C. S. Ry.*, 111 Louisiana, 33; *Cumberland Tel. Co.* v. *Tex. & Pac. Ry.*, 52 La. Ann. 1850; *Iowa* v. *C., M. & St. P. R.*, 33 Fed. Rep. 391; *St. L., S. &c. R. R.* v. *Peoria &c. Ry.*, 26 I. C. C. 226; *Tex. & Pac. Ry.* v. *R. R. Comm. of La.*, 192 Fed. Rep. 280; *S. C.*, 232 U. S. 338; *Thompson* v. *R. R. Comm. of La.*, 198 Fed. Rep. 691; *Wisconsin* v. *Jacobson*, 179 U. S. 287.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

After a full hearing and investigation the Railroad Commission of Louisiana, on August 8, 1903, promulgated the following, known as Order No. 295:

"No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are to be loaded with freight to be shipped out of the State, or are loaded with freight shipped into the State. All tariffs for the 'service' of switching cars in the State of Louisiana, shall be filed with the Commission, within thirty days from the date of this order, and all the Commission's rules and orders relative to rates and changes in rates, will also apply to switching charges."

By a proceeding against the members of the commission, commenced in the United States Circuit Court, Eastern District of Louisiana, February 10, 1904, the appellant, a common carrier of freight and passengers operating lines in Louisiana, attacked the validity of this order upon the ground that it is an unlawful attempt to regulate interstate commerce and for other reasons, and prayed that defendants be restrained from enforcing it. Shortly thereafter a temporary injunction was granted to remain effective pending the cause or until otherwise directed; and on October 6, 1904, defendants answered denying all the alleged equities. The record discloses no further action by either party until April, 1913, when a rather meagre and unsatisfactory agreed statement of facts was filed. The trial court dismissed the bill without prejudice —January, 1914,—saying that the questions involved had been indirectly decided by this court in *Grand Trunk Ry.* v. *Michigan Railroad Commission*, 231 U. S. 457.

From this decree a direct appeal was taken and a supersedeas was allowed.

The extraordinary delay in bringing the cause to final hearing is not explained; and in the circumstances we deem it quite sufficient briefly to indicate and decide the controlling question.

With the consent of the proper local authorities appellant constructed and now operates at New Orleans extensive terminals including switch and side tracks, warehouses and yards. These are essential to the proper conduct of its large interstate and foreign business; and when it brings freight there the cars are placed on its various switch tracks to be unloaded by the consignees. At New Orleans physical connections exist between appellant's tracks and the lines of competitive railroads leading therefrom to many States; if Order No. 295 is enforced its switch tracks will be subjected to use by such railroads; more cars will pass over them; and its power to comply with obligations to patrons will be hindered. Together with the various railroads appellant has published and now has in effect terminal tariffs covering switching; these include no rates for transporting freight to or from the city "but simply cover the charges made for switching cars from the depot or yard of one railroad company to points on its terminals." Upon orders of the consignees certain switch movements are made entirely within the switching limits of the city between points one or both of which may be located upon the terminals of the Illinois Central, and for these charges are made varying according to distance with an addition of three dollars per car for rental. When a car loaded with interstate freight arrives at New Orleans the consignee is first notified that the contents are ready for delivery at the carrier's depot or warehouse. After calling and paying the charges he gives to the agent of the railroad transporting the shipment an order directing that the cars be switched and

placed on some terminal or industrial track for delivery. This order is then submitted to the Illinois Central Railroad and in due course is executed by it.

From the foregoing summary of the facts stipulated it fairly appears that obedience to Order No. 295 would require appellant, upon demand of a carrier or shipper and on terms fixed by the State Commission, to switch empty cars from any connection with a competing interstate railroad to a designated side track within its own terminals for the purpose of being loaded there with goods intended for interstate commerce, and when so loaded to move the same back to the competitor's line for continued transportation to another State. Likewise appellant would be required to accept from competing interstate lines at points within the city loaded cars brought from other States and place them on its own side track, although such track was the real destination contemplated at the time of the original shipment. Switching movements of this kind (we do not now inquire as to others) constitute a part of interstate commerce the regulation of which Congress has undertaken, and consequently the order of the State Commission transcends the limits of its powers.

When freight actually starts in the course of transportation from one State to another it becomes a part of interstate commerce. The essential nature of the movement and not the form of the bill of lading determines the character of the commerce involved. And generally when this interstate character has been acquired it continues at least until the load reaches the point where the parties originally intended that the movement should finally end. *McNeill* v. *Southern Railway*, 202 U. S. 543, 559; *Southern Pacific Terminal* v. *Interstate Commerce Commission*, 219 U. S. 498, 527; *Ohio Railroad Commission* v. *Worthington*, 225 U. S. 101, 110; *Texas & New Orleans Railroad* v. *Sabine Tram Co.*, 227 U. S. 111, 126; *Louisiana Railroad Commission* v. *Tex. & Pac. Ry.*, 229 U. S. 336, 341.

The contention for appellees that switching cars at junctions and terminals "is only interstate commerce when performed as a part of the interstate movement on a through rate or bill of lading under tariff authority" is contrary to the doctrine established by opinions of this court in the cases cited above. We cannot undertake as suggested to dissect the contested order and point out whether any part of it constitutes "a workable scheme for the regulation of intrastate traffic." Problems relating alone to commerce wholly within the State must be left to the discretion of the State Commission to be exercised upon a view of all existing, relevant facts and circumstances.

The present controversy is not controlled by *Grand Trunk Ry.* v. *Michigan Railroad Commission, supra.* The issues in the two cases are essentially different. There the attack was upon an order of the State Commission "suspensory only of the tariff of the appellants, not a final determination against it or of the conditions which might or might not justify it," and the question was "whether, under the statutes of the State of Michigan, appellants can be compelled to use the tracks it owns and operates in the city of Detroit for the interchange of intrastate traffic." The movement actually regulated was held to be intrastate commerce. It took place within Detroit but between points sufficiently far apart to constitute genuine transportation; and, treating it as a local matter, the Railway Company had applied special tariffs thereto until withdrawn because of disagreement with shippers and commission.

The original bill should have been sustained and a permanent injunction awarded. The decree below is accordingly reversed and the cause remanded for further proceedings in accordance with this opinion.

Reversed.